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TRANSCRIPT
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MONTGOMERY COUNTY COUNCIL

PRESENT

George Leventhal, President	Marilyn J. Praisner, Vice President
Phil Andrews	Howard Denis
Nancy Floreen	Michael Knapp
Thomas Perez	Steven A. Silverman
	Michael Subin

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Council President Leventhal,

Good morning. Is Imam Faizul Khan here? Hello, Imam, please let us begin with an invocation. Nice to see you this morning.

Imam Faizul Khan,

Most merciful benefactor, [inaudible] call upon me and I will answer your prayer. Let us pray. [speaking Arabic] almighty God, Lord and master of all lives prove they benevolent grace and mercy. We have assembled here this morning to express our thankfulness and seek the blessings as we gather here to dispense the trust that has been placed upon us. Oh, Lord, in your word you have given us a vision of that perfect world. Lead us from here to love and from violence to peace, from fear to trust, and from despair to hope. Enable us to eliminate poverty, prejudice and oppression so that prosperity may prevail with righteousness and justice with order. And help us to meet [inaudible] cultures and races, where women and men of different talent, may find in each other the fulfillment of the common humanity. We beseech they help, oh God, to promote the noble objectives of the county government and ask that you bless and guide to righteousness all those that serve and who benefit from thy assistance. Grant them the patience, understanding, vision and courage needed for the task that lies ahead. Oh, Lord, we ask that you accept our prayers. Amen.

Council President Leventhal,

We have a presentation recognizing the 80th anniversary of the Bethesda Chevy Chase Chamber of Commerce. Mr. Denis.

Councilmember Denis,

Thank you, Mr. President. I would like to ask those who are here with the chamber to join me at this time as I make the presentation. As you make your way forward I would just like to say what a great honor it is for me personally not only to keep presenting this proclamation but also in the presence of our former county executive, my dear friend who I served with in the Maryland Senate, Sid Kramer, and Betty Mae Kramer, whose family started Camp Kauffman where Sid and Betty Mae met, will the marriage last? That's what we want to know. And Bruce Adams, by the way, and I don't know anyone who is a baseball fan but one of the great pitchers with the Mets, John Maine, who won a key game for them, played at Shirley Povich Field under Bruce Adams' tutelage, and of course, Bruce a former colleague here. But I don't want to jump ahead to the next proclamation. The BCC Chamber, the Bethesda Chevy Chase Chamber of Commerce, not only the biggest chamber in Montgomery County but the biggest in the state of Maryland. Thank you so much for the chamber, for everything that you have done. I am going to introduce the people who are here today and then read the proclamation and present it. Ron Rash, who had my father's job at one time I understand as council to the council, Gianne Italiano, Ann Martin, Peter Ensign, Patrick O'Neal, Michelle Cornwell, Lawrence Kotchek, Dave Davney, Carol Tradwick, Diane Gilbert, Ann Marie Pinto, Lauri Pomponio, Gloria Arnold and Brenda Harris. Thank you so much for joining us. I now will read the proclamation, whereas in 1926, who was president? Calvin Coolidge. When Calvin Coolidge was president, and the next year, by the way, a judge from Missouri by the name of Harry S. Truman, came to Bethesda to dedicate the Madonna



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of the Trail statue in front of the post office. Next year, guys and gals in the chamber, I would like to be able to join you and others in restoring the Madonna, taking her back from the police academy - she is not in custody. In a sense she is in custody, but we need to replace that statue. In 1926, a group of local business men - any business women at that time? It just says businessmen - realized the value of joining together to improve the community's economy and its quality of life and formed what is today the greater Bethesda Chevy Chase Chamber of Commerce. It's my understanding at that first meeting the subject was traffic. What are they going to do about traffic - I think it is real actually; and should they have a traffic light in Bethesda. I think that's true. I think I actually discovered that going through the books once. Whereas, this group of energetic, imaginative and determined founders of the chamber created an organization which has continued to be a major force in the community by sponsoring community projects and by promoting local businesses. And whereas through the greater Bethesda Chevy Chase Chamber, businesses enhanced the community through a variety of programs and promote public/private partnerships that focus on social, economic and political issues affecting the health and wellbeing of citizens of Montgomery County. And whereas members of the Bethesda Chevy Chase Chamber of Commerce are responsive to the needs and concerns of its members and the entire community. They are a professional, creative resource and advocate for addressing the needs and challenges facing the fast-growing area of Bethesda Chevy Chase, and whereas through its spirit of civic mindedness, the greater Bethesda Chevy Chase Chamber of Commerce has helped to make Bethesda Chevy Chase an outstanding community in which to live and work. Just this past weekend we had the crafts festival at Bethesda Row. A few weeks ago the Taste of Bethesda in the Woodmont Triangle area in the process of being revitalized thanks to my colleagues and the council and then amendment to the sector plan that we adopted unanimously. Now therefore, be it resolved that the County Council of Montgomery County, Maryland, hereby recognizes the 80th anniversary of the greater Bethesda Chevy Chase Chamber of Commerce be it further resolved that the county council takes this opportunity to wish the greater Bethesda Chevy Chase Chamber of Commerce much success in its present and future endeavors, presented this twenty-fourth day of October in the year 2006, and signed by my colleague, the President of County Council, George Leventhal. I am honored to to present it. Let's give it up for the BCC Chamber! Okay. Who am I presenting to this to? Ann? Okay, Ann. Accepting the proclamation is Ann Martin. Ann, do you want to say anything?

Ann Martin,

Thank you. I just want to thank all the past presidents and board members and staff that came here to today and made it all possible over the last 80 years. Thank you. Thank you, [inaudible]

Councilmember Denis,

Thank you. Anyone else want to make any comments? Okay. All right. Thank you very much. Again a big hand for the BCC Chamber; they do a great job.

Council President Leventhal,



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Note to Mr. Denis' office, decaf please. Mrs. Praisner has a really fun proclamation. And we are joined by distinguished colleagues and former colleagues.

Councilmember Praisner,

If I can ask Betty Mae Kramer and Bruce Adams and Carolyn Neal and Andrea Jolly to join me up here and Chuck Short as well. Peggy, are you coming too? No, okay. Sid, are you coming too? Sid, come on. Sid, come on. The man - come on, Sid. Come on. Talk about community spirit. We know it is alive and well in Bethesda Chevy Chase through the chamber and Howie has some extra energy, obviously. But It is also a wonderful opportunity for us to acknowledge this coming Saturday, is the 20th anniversary of Community Service Day. It does not seem possible that it has been twenty years. It is impossible. Go ahead, Bruce. Spoil our fun. Bruce Adams had hair. But you weren't shorter. Anyway, standing around me are many of the people who had the foresight, the vision, the creativity and the energy to help us start this wonderful initiative in Montgomery County. Former County Executive Sid Kramer, former County Councilmember Bruce Adams, Betty Mae Kramer who was very involved at that point with helping with volunteerism. Andrea Jolly who represents the volunteer center now and for some time. Chuck Short. I'm trying to remember the name of the department, and I can't anymore? Family resources. That is right. One of the four, right Chuck. And Carolyn Neal who joins us from the God's country on the eastern shore, who came back to be with us today; who along with Peggy Fitzgerald-Bear, constituted the major part of the brains behind Bruce Adams, right?

Bruce Adams,

More than you know.

Councilmember Praisner,

No I was there, remember? No, seriously, this is a wonderful project and a wonderful effort that brings - there is Terry Busch. Remember her? Brings together the community to work in a variety of ways to serve the whole community. And it is hard to believe that it has been 20 years. But having participated and gone to a variety of venues in which this effort continues, it is a wonderful testament - one to the vision of the individuals behind me, and two, to the character and the heart of Montgomery County, which is many volunteers who come forward not just on Community Service Day but every day of the year to serve the community. Whereas October 28 marks Montgomery County's 20th Community Service Day. And whereas for two decades county residents have been rolling up their sleeves to give their own time, energy and labor to do what needs to be done and make the county a better place to live. And whereas, this long-running effort and volunteer spirit and civic fortitude is held each year in the fall and has involved tens of thousands of county residents in service to their communities and at the same time, saved the county millions of dollars in public expenditures for needed projects. And whereas the successful implementation of Community Service Day is due to the groundbreaking work of former Councilmember Bruce Adams, Volunteer Partnership Montgomery President Betty Mae Kramer, the volunteer center now led by Andrea Jolly, and many, many other community leaders. And whereas Montgomery County's Community Service Day has inspired innumerable local efforts throughout the



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United States and other nations. And whereas the voluntary efforts have ranged from tutoring, to cleaning our streams, feeding the hungry, building and repairing housing, providing recreational activities for our youth, and helping senior citizens. Now therefore be it resolved that the County Council of Montgomery County, Maryland, hereby proclaims October 28, 2006, Community Service Day, and calls upon all county residents to volunteer their time in whatever way they can to make this anniversary day a roaring success. Here is the proclamation. Betty Mae, want to take one. Bruce, want to take another. Andrea, on behalf of the Volunteer Center, if you would take one. And, Carolyn, if you would carry one back to these to ensure for all of the work you have done, thank you so much to all of you. This was really Bruce's brainstorm. And I think that you should have something to say about it.

Bruce Adams,

Thank you. This is very gratifying to have something like this carry on as long as it has and I hope will carry on for a whole lot longer. The whole idea is this is such a great community and to give people the opportunity to participate, with the hope this one day would make it a lifetime of commitment to service after people would go out and enjoy and say this is really great, not just great for people I served but great for me, myself as well. The genesis of this, I was thinking about it, it was so simple. I was walking through the Kennedy Library 20-some years ago and I was drawn to this obscure corner of the library and saw this quote from this former Peace Corps volunteer and he said I have never done anything in public service, I never really helped anybody because nobody ever asked and Kennedy asked. And I thought wow that simple. So Community Service Day is that simple. We are just asking people to come out on Saturday and lend a hand and make Montgomery County an even better community. Now, Carolyn and Chuck and Betty Mae did all the hard work, and Sid and I got all the glory. So, thank you. Life is unfair.

Betty Mae Kramer,

But at that time Bruce had a serious job to do. He was a member of the county council. And so he had serious work--

Bruce Adams,

Sid had a job. He was working hard.

Sid Kramer,

I think it is appropriate for me to share with you how that worked. Betty Mae came to me one evening and she told me what I was to do as it relates to this day. And she spelled it all out very clearly. She gave me a sheet. The next day I came in as county executive with my marching orders, and it all fell into place very clearly. And as I look back at it, I think it is absolutely fabulous that it has rolled on and improved over the years. And I do recognize the fact that the catalyst was Bruce Adams and Betty Mae, and they put their shoulders together and it worked beautifully.

Councilmember Praisner



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Anybody else? Thank you all very much. We need to get a picture. We need to get a picture. Bruce.

Council President Leventhal,

Thank you to all of our friends and colleagues. Ms. Lauer, are there any changes to our agenda or our calendar?

Linda Lauer,

There is one addition to the consent calendar. The introduction of a special appropriation for the Arts and Humanities NDA Heritage Montgomery, \$25,000 for stabilization of Loving Charity Hall, public hearing and action is planned for next Tuesday, October 31st. We did receive one petition this week. It was a petition supporting competition in the Montgomery County cable business. Thank you.

Council President Leventhal,

Thank you. Are there minutes before approval?

Council Clerk,

The minutes of October 10th, for approval.

Council President Leventhal,

It is there a motion to approve the minutes of October 10th, Mrs. Praisner has moved and Mr. Andrews had seconded - approval of the minutes for October 10th. Those in favor of the motion will signify by raising their hands. It is unanimous among those present. We turn now to the consent calendar. Can I get a motion to approve the consent calendar? Mrs. Praisner has moved and Mr. Knapp has seconded approval of the consent calendar. Mr. Andrews has a comment.

Councilmember Andrews,

Thank you, Mr. President. I want to speak briefly on Item F, which is a special appropriation to the FY07 operating budget for State Attorney's Office, Family Violence Unit, to add an assistant state prosecutor and the victim witness coordinator to work on computer facilitated crimes against children and sex offender registry violations. Unfortunately, this is a growth area and our county needs to keep up with it. The State Attorney's Office has identified this as a critical need and the public safety committee recommends approval.

Council President Leventhal,

If there are no further comments on the consent calendar those in favor of adopting the consent calendar will signify by raising their hands. It is unanimous among those present. The County Council is now in legislative session. Is there a legislative journal for approval?

Council Clerk,

No there is not.



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Council President Leventhal,

There are no bills for introduction. We have one bill for final reading. It is expedited bill 43-06 relating to ethics for the advisory board for the Montgomery Cares Program. The HHS Committee recommends the approval of this bill. It is a fairly straightforward bill that simply requires members of the Montgomery Cares Advisory Board to publicly disclose the nature and circumstance of any conflict they may have before they vote on any board recommendation. Members will also file a limited public financial disclosure statement. This bill is necessary because we established the Montgomery Cares board to provide seats for significant stakeholders in our health care delivery system. If this board had to operate under current law, members, for example, representing nonprofit clinics or representing hospitals could not serve on the Montgomery Cares board and that would negate the purpose of having stakeholders on the Montgomery Cares board. So the HHS committee is recommending approval of this bill. If there are no comments or questions the Clerk will call the roll.

Council Clerk

Mr. Denis.

Councilmember Denis

Yes.

Council Clerk

Ms. Floreen?

Councilmember Floreen

Yes.

Council Clerk

Mr. Subin?

Councilmember Subin

Yes

Council Clerk

Mr. Silverman?

Councilmember Silverman

Yes.

Council Clerk

Mr. Knapp?

Councilmember Knapp

Yes.

Council Clerk



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Mr. Andrews.

Councilmember Andrews
Yes.

Council Clerk
Ms. Praisner.

Councilmember Praisner
Yes.

Council Clerk
Mr. Leventhal.

Council President Leventhal,
Yes. The bill passes 8-0. We are now in District Council Session. We have a request for oral argument on Application #G-836. Do we have the hearing examiner's report on this?

Councilmember Praisner,
We're early.

Council President Leventhal,
We're early?

Councilmember Praisner,
Yes.

Council President Leventhal,
A little early.

Unidentified Speaker,
[inaudible]

Jeff Zyontz,
For the record, Jeff Zyontz - County council staff - for the record, you do have to decide on the oral argument first. You have to--

Councilmember Praisner,
This is scheduled for 10:10--

Council President Leventhal,
But we generally begin with a five minute report by the hearing examiner. Why don't we move ahead to -- we don't have that much. We really need the hearing examiner. Okay, I guess we are going to have to recess for 15 minutes. The council will be back in session at 10:10.



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Council President Leventhal,

We are back in session. Let us hear from the hearing examiner for a few minutes on the first request, Item Four.

Franciose Carrier,

Our first case is G-836; this comes to you on remand. And the original consideration of this case, the council remanded at my recommendation because there were concerns about the compatibility of the development with the surrounding area; in particular a little group of three single-family homes across the street on Home Crest Road. The applicant made very significant changes to the development plan and in my view, it is now compatible with the surrounding area including those homes. They have fewer homes now facing Home Crest Road, and they are divided by a reforestation area. So the vista will not be the tightly packed homes that I was concerned about earlier. There will be three homes and then a road, and then two homes and then a reforestation area, and then two more homes. We do have a request for oral argument from a lady whose elderly father lives across the street in one the three single-family homes, and that request is opposed by counsel for the applicant.

Council President Leventhal,

The gentle lady from Bel Pre Road?

Councilmember Praisner,

I think it would be helpful for us to have some of the discussion just about the compatibility issue and especially the community concern which I think still remains. Some of the community concerns still remain including street trees, sidewalks, et cetera. And whether the council can, within its action, as one of the requirements, include the issue of street tree sidewalks rather than the model that is being proposed. Not sure whether that can be done -- I don't think it can be done by the council. I would like to schedule an oral argument and have an opportunity to discuss the compatibility, just to have that discussion about the compatibility within homes nearby, the single-family homes. The concern I have that the homes all still appear to face inward rather than onto Home Crest, which is, I think, one of the other issues. And this issue of sidewalk and street trees, which is a major concern of the broader community. So I would like to request oral argument for say 15 minutes per side, to discuss those issues.

Council President Leventhal,

Is there a second?

Unidentified Speaker,

Second.

Council President Leventhal,

Okay the motion has been made and seconded to grant oral argument. Is there a discussion on the motion? Go ahead, Mr. Silverman.



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Councilmember Silverman,
This will be next week, right?

Francoise Carrier,
It would have to be.

Unidentified Speaker,
Yes.

Councilmember Silverman,
Just want to make sure everybody knows.

Council President Leventhal,
So oral argument would be scheduled for October 31. I think we can do that without objection. Oral argument will be scheduled for next week, October 31 on, Application number G-836. Application number G-849; Ms. Carrier.

Francoise Carrier,
G-849 is a simpler procedural posture, the first time you have seen the case. There is no request for oral argument. Application 6 to build a townhouse community on Darnestown Road, close to its intersection with Travilah Road. The planning board, the technical staff and myself all recommend approval. There was opposition from one community member who lives next door, but there is no request for oral argument.

Council President Leventhal,
Ms. Floreen.

Councilmember Floreen,
Thank you. Can you explain to me how close these homes would be to active areas of the public service training academy?

Francoise Carrier,
The record doesn't have a lot of detail about the distances. The one distance that I did request, and I got an estimate of, was the distance to the helicopter landing site, and that was 300 feet was the closest home in this community to the helicopter landing site.

Councilmember Floreen,
Is there is a map or something in the record that shows

Francoise Carrier,
There's an area--

Councilmember Floreen,
I couldn't tell from looking through all this.

Francoise Carrier,



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There is an aerial photograph, if you look on Circle 24. There is an aerial photograph

Councilmember Floreen

Yeah, but I couldn't tell what was what.

Francoise Carrier,

--and the training academy. There is a wooded area between the subject site and the training academy. If you see there is a little box that says Lolache residents, that line--if you can see where that goes to, it goes to the first long, skinny rectangle facing--that's touching Darnestown Road, if you come off of the intersection with Travilah. And that is the residence of the next-door neighbor who has a dance studio in his home in that location. So that shows you where the subject property begins. And then the subject property goes until the first -- you can see the larger office buildings on the corner of Darnestown and Key West. When you get to the first of those buildings that is where the subject site ends. So it is all of the long, skinny parcels in between those two points. And those parcels are all separated from the training academy by a pretty substantial wooded area.

Councilmember Floreen,

Do we know what is in their master plan for development in this area?

Francoise Carrier,

There was recently approval on a mandatory referral and it did discuss their plans for expansion. To my knowledge, none of those involved encroaching on that wooded area. They plan to pave over the helicopter landing site and build a kennel, and I think expand the main training building. I am not aware of anything that would get rid of that buffer. Then again I didn't participate in that procedure, so I don't know all the details.

Councilmember Floreen,

From what I could see in the record, there wasn't much discussion about the training academy period.

Francoise Carrier,

There wasn't. The planning board had a concern about noise from the training academy but the noise studies that the applicant had done suggested that the noise levels at that end of the site - the end of the site closest to the training academy were quite low.

Councilmember Floreen,

Right, but that doesn't anticipate any other future developments at the training academy.

Francoise Carrier,

It's true there was no detailed study. For instance, there was no--

Councilmember Floreen,

How would they know?



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Francoise Carrier,

--helicopter noise. You know, estimates could be made. If the council feels that there is just not enough evidence on noise, it certainly can be remanded with an instruction that they more fully examine noise. It is not something that is strictly required anywhere in particular in the zoning ordinance at this stage. It is certainly within the council's purview if they find there is a compatibility concern or a public interest concern. And the planning board, as I am sure you saw, did have a concern about noise. They didn't articulate it in great detail but they were concerned about noise both from the road and from the training academy. I felt there was significant evidence brought forward by the applicant that I felt the noise issue had been adequately explored for the zoning stage.

Councilmember Floreen,

Did any representatives from the training academy appear in the--?

Francoise Carrier,

No.

Councilmember Floreen,

--in the zoning case?

Francoise Carrier,

No, the only evidence about the training academy really came from the technical staff report on the mandatory referral.

Councilmember Floreen,

In another case?

Francoise Carrier,

Well it was the mandatory referral regarding expansion of the training academy.

Councilmember Floreen,

Right.

Francoise Carrier,

Yes.

Councilmember Floreen,

I am concerned that this wasn't looked at very thoroughly. It certainly is an issue for the relationship between Strathmore Hall and what is going on next door to it. The issue of the ability of public facilities to operate to expand, to develop in the limited amount of space that we have available for those public facilities is a very important one. I suppose -- is the zoning for public service training academy R-90?

Francoise Carrier,

It's hard to read because it's rather dark.



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Councilmember Floreen,
Would that be in the--

Francoise Carrier,
But I believe that you are right. I think it's--

Councilmember Floreen,
It's rather dark indeed.

Francoise Carrier,
Yes, I think it is R90 TDR.

Councilmember Floreen,
So it was all anticipated at one point that this would develop in a different way?

Francoise Carrier,
Well--

Councilmember Floreen,
This whole block and then the training academy came along I guess.

Francoise Carrier,
Well there was discussion in the master plan about the possibility that the land fronting on Darnestown Road might be incorporated into the training academy. And the master plan had sort of two alternatives; either it goes to the training academy or if that doesn't happen, then it should be consolidated and used under RT. At this point the technical staff report on this case says it doesn't appear that there is any need for this property for the training academy therefore we think the RT zoning is appropriate as the alternative suggested by the master plan.

Councilmember Floreen,
Next to a helicopter pad?

Francoise Carrier,
Well we have -- you know, helicopter landing sites exist in many areas of the county where there are residents. As every place we have a hospital, people get over-flights of helicopters all the time.

Councilmember Floreen,
Well right, but the hospital -- those relationships are -- if we were to revisit them, if we could change those relationships, we might have a different perspective on how close we should encourage dense residential development. Those things have evolved over time. But when we have a chance to affect the future of the relationship, it seems to me it is a worthy concern. Well I'm very concerned about this issue. I just think there is an inherent conflict between the training academy and this intense residential project. Right on the same block basically. You said it is about 300 feet.



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Francoise Carrier,

Three hundred feet between the helicopter landing site, which is in sort of the right lower corner close to Travilah -- well I guess it is not Travilah, I guess it is Great Seneca on that side. The helicopter landing site was pointed out during the hearing. If you look at the map on Circle 24, the aerial photo on Circle 24, as I recall, the helicopter landing site is -- how to describe this. It is near where Travilah intersects Darnestown. If you went straight up from Travilah Road you would basically run into the helicopter landing site. It is closer to existing buildings there including a residence that it is to the ones that are proposed here.

Councilmember Floreen,

There are several residents or lots between this project and that?

Francoise Carrier,

There are several lots. Only one of them is in solely residential use. The one directly next to the subject site is used as a residence and also a dance studio. Next door to that there is apparently a large child daycare center, and next to that I believe is a Pepco substation, and then there is one remaining single family home that appears to be just in residential use.

Councilmember Floreen,

And in terms of the other active areas on the training facility site; I don't know it really, really well. Is that -- the part that appears to be paved that is closest to these properties; do we know what that is?

Francoise Carrier,

I believe that that is the main building where they have classrooms.

Councilmember Floreen,

That is the classroom building?

Francoise Carrier,

That is my recollection from the mandatory referral.

Councilmember Floreen,

But this was not raised in the --

Francoise Carrier,

You know, there was not --

Councilmember Floreen,

--in the zoning case?

Francoise Carrier,



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There was nobody present as far as I could tell who had detailed knowledge of exactly what was where on the training facility property. It was not--or if they did, certainly the information wasn't offered up. I was particularly concerned about the helicopter landing site because that is an obvious source of noise. And I did get a distance estimate on that, but it wasn't really just scaling it off on a map, it wasn't actual detailed knowledge.

Councilmember Floreen,

This doesn't appear to have come up in the planning board analysis?

Francoise Carrier,

Well, they--they did--

Councilmember Floreen,

Apart from the noise.

Francoise Carrier,

The only issue they raised with regards to the training academy was noise. They--they did not--they apparently took their staff's representation at face value, that is the staff report says as the county planned for the future of the training academy site, it was determined that acquisition of the Darnestown Road properties was not necessary for the expanded operations of the training academy. And that conclusion does not appear to have been questioned by the planning board, nor did I question it.

Councilmember Floreen,

Okay. I think we are asking for trouble, is my concern. Is there any provision for covenants on these homes that would--

Francoise Carrier,

There is a provision for--let me look it up so I can make sure I tell accurately. There is a binding element that would require the applicant to put both in their sales documents--

Councilmember Floreen,

But that is not useful.

Francoise Carrier,

-- and in the covenants -- well they have to put in the sales contract and the homeowners' association document a description of the properties adjacency to the training academy and its approved uses including a fire and rescue station, lighted helo-pad, driver training course and canine training unit. So there is provision for--to make sure that people are notified that they are buying property next to an unusual kind of use.

Councilmember Floreen,

Well that is like the also effective notification requirements for the people who live along the crossing about the ICC that has not stopped their concern about a change in their community that they--



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Francoise Carrier,

Well it may be a little, I mean that's something that did not exist but was a maybe future--

Councilmember Floreen,

And likewise here--

Francoise Carrier,

This is an existing facility.

Councilmember Floreen,

Well but the point is, the master--whatever the opportunities on this property are for further development for training, we don't know at this point in time. I mean, it could be very active--you know, they burn down things--I don't know if they burn down things, but I know that is where I had my training on--through burning things. I mean it can be very active, it can be very invasive I suspect to people who don't expect it in their backyard.

Francoise Carrier,

That is a perfectly legitimate concern. It is at the council's discretion to take that into account.

Councilmember Floreen,

Okay. I think Mr. Subin has more to say about this. I am very concerned about this that it wasn't even addressed in the record before you.

Francoise Carrier,

I guess there is just a question. I don't know if--what the legal impact maybe as the relationship between the owner of these properties and the county if the county denies this rezoning because maybe we want to expand the training academy. It is denying a use of the property; it is certainly not denying all use. The property is zoned for residential use and it is, you know, has single-family homes on it. It can continue to have single-family homes on it. You know, the dilapidated ones could be torn down and new ones could be rebuilt, and it would be a much lower density.

Councilmember Floreen,

Well that is the point. Is this the way we want this corner, to develop? Is this truly a compatible long-term relationship? Obviously It is evolving--has evolved. That is the challenge for these location.

Francoise Carrier,

The October 31st date is a deadline for this council to act. It doesn't mean that if this council feels that this needs further investigation, it needs to go back to the planning board, there needs to be more detailed analysis of the training academy; you know, the case can be remanded and it can be taken up by the next council.

Councilmember Floreen,



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Well that is certainly a direction I would like to proceed in to get further--to get the record flushed out from the perspective of the training academy.

Council President Leventhal,
Are you making a motion?

Councilmember Floreen,
Yeah, I'm going to make a motion to remand it for further information as to the compatibility and the long-term needs of the Public Service Training Academy.

Council President Leventhal,
Okay, just to be clear now, a motion has been made by Ms. Floreen and seconded by Mr. Subin to remand application G-849 back to the planning board with a request that the issues of proximity to the Public Safety Training Academy be addressed. So that is--the motion is now before the council. I am going to request the colleagues, if they have remarks to make, make remarks on the motion. Chairman Andrews.

Chairman Andrews

Thank you, I agree with the motion. I think there are a lot of questions about this in terms of noise that need to be addressed. The staff report to the planning board commented on what was conceived at least in the proposal, and that noise walls were as described on Circle 80, that the use proposed by the size affected by significant noise from several sources, that it would be above the noise levels at several of the properties, that the schematic development plan includes a 5-foot wall which is going to have almost no effect. And the specific additional noise mitigation must be included in [inaudible] middles and the planning board said they were not persuaded about the noise plan. So I think that is a big issue in addition to the compatibility with the zoning of the other properties near. So I support the motion.

Council President Leventhal,
Mr. Subin?

Councilmember Subin,
I join Ms. Floreen in her concerns. And I join in some of the things I have heard between the lines. It is baffling to me how all the way through this process nobody could have picked up and followed through on the issue of the training camp. It is not just an issue of noise. There is an issue, as Ms. Floreen alluded to, of smoke. I know it is not highly visible but there's a big tower there that can be seen throughout the area. And it is used for training and training firefighters and fighting fires at night, during the day, for large buildings. There are simulated gas tanks there that are set on fire. There are simulated--there are wrecked vehicles that are set on fire. There are flashing lights going day and night. There is fire apparatus in that area day and night. In the history of this county, it is pretty clear all of these uses end up being deemed not officially or in court, a nuisance but were in and out of court because people are complaining. One only needs to look at the Airpark. And I think the analogy is pretty clear. Because people move in and it seems to me that they must look at their houses and go to check them out at about 3:00



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in the morning when no planes are flying. Or on a foggy day when no planes are flying, because all of a sudden they're surprised to know that 300 feet--300 yards from their home there is an airport. And that is what is going to happen here. And what compounds the issues we are going through a large master plan and expansion of the academy and the issue of the master plan and what is there and not there, I think, it is very irrelevant. Because there is a lot on paper that is not on the ground. And the fact remains that the desires of both the police and fire service have not been adequately addressed in what we're doing simply because there is no room. And they need more room. And if we're going to try to get them more room at the academy to expand and the [inaudible] housing is in, guess who is going to lose? It's actually going to be the people of this entire county because we are going to end up with an inadequate training academy. And training especially for folks in the fire service is getting more complicated as the seconds tick by. And they need more and more. And what is going to happen, you can write the book right now--write the book right now. This rezoning passes, some fire chief, whether it's Chief Carr or somebody else in five, six, seven years--and Chief Manger or whoever it is in five, six, seven years, and will come before this body and want to expand, and guess who is going to object to it? The folks right in that area. This isn't a minor public use, it is a very major public use. And it is a very major public use that is inadequate for the need. And the inadequacy is not because of the vision of the folks who run the police and fire service, it is inadequate because there is not enough room there. Plus not enough money to do what they all want done. And so it's just--it's absolutely baffling how the estimates of the applicant - you're going to have this little bit of noise, but yeah, it's down in the--the noise is down in the noise. And so you really need not worry about that. That should have been the clue right there that they even brought it up. That there was an issue and a problem. I'm inclined to vote to deny but I don't know that that would be fair at this point without having looked at all those issues. And somebody bringing in Chief Carr and Chief Manger or the appropriate representatives to see just what the plans are, and to see--and to put down on the record what is actually going on there. So that in eight years or six years or four years, when somebody comes in and says this place is a public nuisance and ought to be shut down and moved, there is a record to say wait a minute; timeout. Everybody was warned. Just like with the Airpark. Just like with the ICC. And we know that being on the master plan for 50 years isn't enough to get the idea across that something is going to happen. And when it comes to the needs of the public being served, the ICC doesn't hold a candle to what the PSTA does. Nor does it hold a candle in terms of the noise and the smoke and the activities going on around it. It is not a quiet place and it shouldn't be a quiet place. I can't be a quiet place because the people who are training there need to train in an environment of chaos. They need to train so that when that chaos does break out in the real world, they're used to it and they know how to react and they can react. Those are what the issues and the considerations need to be. And the folks who move into that area and stay in that area need to understand this is a piece of property that the county owns and the county needs, and is designed for chaotic situations. It is designed for chaotic situations so that the people of this county can be served, not if, but when that chaos breaks out. So, I mean again, I would be prepared to vote to deny, but I don't think that that would be fair to anybody, so I'll support the motion to remand.



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Council President Leventhal,
Vice President Praisner.

Councilmember Praisner,

Well I will support the motion to remand, but I think the planning board--because the noise test that was done was one of road noise not of noise from the neighboring. But, the master plan does call for residential development as an alternative. So this is not inconsistent with the master plan. And I do recall some conversations years ago about the academy and surrounding properties - and there folks living there now. The question is seems to me though is these are single-family homes now as opposed to more intense residential development, and whether--and that increases the proximity of the house to the edge of the property. So you're putting more residential properties but you're also moving them closer to the academy, which means the noise from the academy is more a factor, it seems to me, which may affect the design and layout or quantity of homes that are approved, you know, schematically, for that parcel. It is consistent with the master plan; it is a question for me of quantity and placement in relationship to the academy; residential development already exists in a variety of places around the academy. But I think the question for the planning board is one of--for the applicant is one of noise in relationship to the academy, not to the street. The noise factors that we've talked about or that are in the report are more road-specific, not academy-specific. And also the design, the specific design being proposed and the relationship of the townhouses closest to the academy become an issue. What's the appropriate buffer, et cetera. Those issues I think can be discussed more in-depth in a remand, but I also believe it is consistent with the master plan.

Council President Leventhal,

Okay. I see that we have a second round of comments by the maker of the motion and the gentleman from District Three. I would observe that we have a motion to remand, the issues have been pretty well vented. I will of course call on my colleagues but at least this councilmember feels like the issues have been fairly, clearly laid out at this point. Ms. Floreen.

Councilmember Floreen,

Thank you. Well I just wanted to be clear. I do think that the whole issue of the long-term--that I would want the planning board to consider the long-term master plan for the training academy and it's implications in terms of relationship to this property. And that includes a whole range of issues between noise, air quality, whatever, that might be affected by the training academy's not only short-term experience, but long-term plans. So I just want to offer that clarification. Thank you.

Council President Leventhal,
Mr. Andrews.

Councilmember Andrews,



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I wanted to add just one other point and that is that there's a fire station plan for this site. And the location of that fire station would be very close to these--to this property and that needs to be factored in as well, because it would get only noisier and I think that is asking for trouble. So I want to urge that that be part of remand.

Council President Leventhal,

Okay, the question is on a motion to remand. Those in favor of the motion will signify by raising their hands. It is Ms. Floreen, Mr. Subin, Mr. Knapp, Mr. Andrews, Mrs. Praisner. Those opposed will signify by raising their hand. It is Mr. Perez, Mr. Silverman and myself. The motion carries on a vote of 5-3. So the matter will be remanded to the planning board. Now we have a couple of housekeeping items here. First of all if I could just get the councils attention very quickly. On the consent calendar it was brought to my attention that on Agenda Item 2A, the resolution to guide the FY08 Council Grants Process, page Circle 2, action item Paragraph 5, where it states the council will convene a Grant Advisory Group the letter S should appear at the end of the word grant, so it should be a Grants Advisory Group, if there is no objection we could just make that correction to Resolution Agenda Item number 2A. In addition, Mr. Perez had a point of personal privilege.

Councilmember Perez,

I was temporarily out of the room when we voted on Expedited Bill 43-06. I'd like it to be recorded in the affirmative, also voting for the consent calendar as well.

Council President Leventhal,

The county council is back and we're in a work session on Fire Safety Code Regulations, Executive Regulation 5-06, and I think we're going to have Minna Davidson walk us through this.

Minna Davidson,

The council has received a package of three regulations that are intended to form the foundation for a major new code enforcement initiative which will enable the fire and rescue service to focus more attention on enforcement requirements for existing structures and systems. There is also fee--related fee schedule that updates and establishes new fees to recoup the full cost of the fire code enforcement operations including additional resources to implement the new requirements. We have here today Chief Carr from the Montgomery County Fire and Rescue Service and Chief Donahue who is the head of the Code Enforcement Section, and they have actually prepared a Power Point presentation to go through the new regulations, the changes that are proposed, the resources that are required, and the overall enforcement concept that they're trying to implement. You should have a copy of the paper slides as an addendum to the packet and should be able to walk through the slides as they go through them on the screen.

Chief Carr,

Good morning.



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Councilmember Knapp,

Chief, if you don't mind, just one moment. I just wanted, for the benefit of our colleagues, to just bring this to their attention. It's unusual I know to bring a regulation like back for a kind of a work session for the council, but I thought--the Public Safety Committee felt that given the breadth of what Chief Carr and Chief Donahue have done over the course of the last -- how long have you been working on this? Eighteen months. This is basically a total rewrite of our total Code Enforcement Package and has implications kind of throughout the county as far as staffing for fire and rescue, to building requirements, to enforcement mechanisms. And Fire and Rescue Service has done a tremendous job in thinking through most of the impacts that this will have but it really is pretty far-reaching, and so what we had hoped to do today was just to have a broad overview given by Fire and Rescue Service to just kind of lay out all of the pieces for the council and if--I think the thoroughness of what Fire and Rescue Service has done comes through. I don't know if there will be a lot of questions on the part of the full council but I thought it was worthwhile for people to at least have the benefit of that whole overview before we ended up raising our hands on this, because it is very thorough and far-reaching. In fact, the Public Safety Committee, I think had four different work sessions just to make sure that we had all of the pieces fully before us before they actually took any action. So I just wanted to kind of lay that out for the benefit of my colleagues knowing this is somewhat unusual but I think the breadth of this is such that, and scope is such that is it important for everybody to at least have the benefit of the overview presentation.

Council President Leventhal,
Chairman Andrews.

Councilmember Andrews:

Thank you, Mr. President. This is really a landmark proposal. Critically important and one that will be a quantum leap forward in terms of enforcement of fire code standards and life safety standards. It has as much potential as anything this council has done in a long time to save lives and I want to commend Chief Carr and Chief Donahue for their very hard, and I think, visionary work on this proposal.

Council President Leventhal,
Mrs. Praisner.

Councilmember Praisner,

Well, I think it is very monumental and I have several concerns, one of which is I don't believe the general public has enough understanding of what is being proposed, and to implement it, and then go out and do more outreach, is I think problematic. So I think the process needs to be changed that has--because the fee structure and the requirements I think there are a lots of folks who are not aware of what the implications are. So implementing it and then telling the world is, I think, inadequate. So I believe we should do, perhaps, a tentative approval, or something and then provide an opportunity for broader public interaction, because there are lots of folks who are going to be affected who have not seen, and don't traditionally see executive regulations. So that's



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my broad comment. I have some other comments but I really think that we need to do this in a different way because of the significant implications. Maybe builders and folks who own apartment buildings have been in the loop, but I don't think daycare providers and others--and I also think there are implications with the whole issue of design of streets and planning that we need to have a broader conversation about. So I don't think this should be acted on next week and I do think we should have more dialogue about the issues.

Council President Leventhal,

Okay, should we have Chief Carr walk us through the presentation? Let's do that then we can come back to [inaudible].

Chief Thomas Carr,

Okay, thank you, and I appreciate the comments and understand the comment. This is a situation where the problem hit us in the face. It was 9-1-1 calls that led to us identifying that we had significant issues with already installed, in place fire protection systems and that's how we got here and we will go through a couple of those tragic events here in a second. Most of the issues should have been addressed during routine maintenance and testing programs already many places, and the responsibility of the building owners. And what we found, in fact, that has not taken place. Most of these systems have not been maintained, they've not been tested as required by our existing code. We've had a number of significant events that have illustrated this, certainly high-rise fire in Friendship Height, the Willoughby, we identified that. Folks couldn't hear the fire alarm. They had big--giant bells out in the hall but in fact in their apartments, in their bedroom, in their sleeping area there was no way for them to hear the alarm and be notified that there was a catastrophic situation just outside their door. [inaudible] a commercial structure there had been a significant change in occupancy that could have led to death or injury of firefighters and certainly occupants because there had been no process that identified what was happening with that structure; what the intended use of that structure was. The Slidell's, elderly couple, 1220 East West Highway, a tragic death. And in that building we found audibility issues as identified at the Willoughby. We also found stand pipe issues. So here was a catastrophic loss of an elderly couple in our community, and in fact we had other residents of that structure at risk in the same building fire. Bugaboo Creek up on Shady Grove - the hood system was not properly operating. Leisure World - the tragic death of Mr. Welsh. We had a firefighter mayday. We had five civilian rescues that we had to make. And we found that all of that was contributed to by the lack of a passive fire protection system that allowed the door to close automatically, which would have stopped the spread of smoke and heat, and certainly lessened the impact there. By the way, about a \$6 million fire loss in that one structure or that series of structures. Washington Adventist Hospital - we responded to a building fire in the psychiatric unit, an actual fire that was set by an occupant. We arrive on the scene and, in fact, when we get ready to put water on the fire, we find that the stand-pipe system that's providing the water does not operate. And we met with Adventist Health Care, their board afterwards, and sat down and had a very frank discussion, and, in fact, they showed us that the system had been inspected by a private fire protection company; and, in fact, they had the proper documentation. But



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obviously the inspection wasn't such that it assured that we had an adequate life safety system in place. So that could have led to a more significant tragedy. What are we empowered to do right now? Well we operate under the Fire Safety Code Section 2223, and certainly it states that we under the fire chief, inspect as often as may be necessary all buildings and premises to ensure we have a safe environment for the members of our community and for the men and woman of the Fire and Rescue Service. And that we do something about it if we find a situation that is not appropriate. What do we currently do in that regards? We have a Fire Code Enforcement Section and they're dedicated because of the resources they have and because of the amount of new construction in the county, they're dedicated primarily to new construction. That consumes all of their work hours. We're currently funded separately though by you all to do residential sprinkler inspections, so that's a separate project. And we're accomplishing a hundred percent of that work in the residential sprinkler program. And we also are funded separately for yearly public and private school inspections. And that has been a tremendous program and we have a wonderful relationship with both the public and private schools and feel confident about the fire safety in those structures. In addition to that, we have battalion-assigned inspectors who not only work the new construction but also handle complaints that come up from folks in the field. And you see what's happening now is we're identifying problems as we either stumble across them as a result of a 9-1-1 call or as we come across them in our process of day-to-day comings and goings. We don't a systematic approach in place. We don't have the resources in place to assure that we're touching all of these critical structures on a regular basis. So what should we be doing? Well obviously we should be touching them and in fact, the order of magnitude here gives you some perspective, as best we can determine compiling, looking at all of the databases of commercial properties - that's our county GIS, DPS records, Health and Human Resources records, economic development, DHCA, and Fire Rescue records - as best we can determine, there are over 31,000 inspectable (sic) commercial properties in Montgomery County. We know that that's a conservative estimate. That would require, again our best guess, about 27,000 enforcement staff hours to accomplish that on an annual basis. In addition to that, we're currently dealing with about 7600 new construction projects and that's only new structures, and that's consuming basically a hundred percent of the staff time at this moment. That total of those two requirements equates to about 45 inspectors and that includes hazmat, which we'll address separately here in a moment. What are we finding with our current, very limited inspection opportunity? What are we actually seeing as the problem out there? Besides what I've already described at actual incidents, we have a critical issue with pressure reducing valves in high-rise structures. There are specific codes that mandate what can and can't be done there; the maintenance and testing. And all of that is not in place and we don't have the resources to keep our fingers on that. Of course we've talked about fire department access issues, Clarksburg specifically, but other areas of the county also. And we now are more active and through your support in all of that process but there's a lot of work to do there and there's a lot of work to do to assure that once the community is built, that we have the appropriate access to get in and help folks in their time of need. Of course I've talked about audibility issues and existing alarm systems that were designed when the components of occupancies were different than they are today; different materials has



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impacted our audibility and in fact our aging population is impacted by audibility issues; so very much a concern for our senior population. Active alarm systems - these are critical to ensuring that folks know what's going on and know when it's time to evacuate and understand and can be notified when there's an emergency. Yet in current environment the responsibility is solely on the building owners and based on our experience, we don't have a high degree of expectation that those are all properly inspected and maintained. We have no QA process to assure that all of that is in place. And then hazmat storage and use; we know, and this is required by NFPA1, that we have a significant number of hazmat facilities in the county. In fact, we collect fees for those facilities, yet we don't do any leather on the street, hands on evaluation of what's in place, how it's stored, if it's properly store. There's no ability, there's no staff to assure that that's in place. And if we look at our neighbors, Fairfax County, as far as how they have dealt with this problem over the years, and we think it's because they did do a study and actually that caused them to change their process. And they're roughly equivalent to us. They also did not have a system in place until about ten or so years ago when it became evidence to them that they had problem. When they put the system in place and started inspecting the structures, 80 percent of the structures they evaluated indicated a potential failure of the system should it be needed in an emergency. They would not have worked. And that's just--and it seems to mirror what we're finding anecdotally here in Montgomery County and that to us is alarming. Once the program became operational in Fairfax County, the good news is that they reduced that to a 20 percent working towards compliance rate; and what that means was they found year-to-year issues but those were all issues that could be readily identified and did not have an impact on the potential of the system to operate; a missing lens on an exit sign or something of that nature; things that were less critical, but significantly reduced in a very short period of time. So they very much believe they've got the right formula there. And interestingly, they assign ten personnel to the hazmat problem; a hundred personnel, by the way, to the rest of the inspection process. What's our plan? Well systematically, not overnight, but systematically to add personnel based on a risk evaluation of our occupancies. In other words, we have prioritized and will continue to prioritize the risk at each structure, and assure that those are addressed first. We're going to get the elderly high-rise before we get the neighborhood 7-Eleven. And we have an algorithm that takes us through that, and we will very much focus on that. And also at the same time we've accounted for competing organizational needs for personnel. Obviously, as you know and you all supported this year, the first phase of four-person staffing which is critical to firefighter safety and our efficiency and improving EMS delivery as well as rural water supply delivery, we have a lot of resource needs in the Fire Rescue Service. This plan takes that into account. It also increases the flexibility of the office. It allows us to focus folks where we need to focus folks. We have a critical project that's moving forward at a rapid pace; we can move folks around and assure that we're there to meet the needs of the builders and of the community. It also addresses our emergent needs within operations. It allows these folks to be utilized on the scene of fires, in support of operational [inaudible], in the event of a catastrophic event or disaster, something of that nature. In order to do this it requires regulatory changes and three are provided here to you - fees, buildings and system regulations, and all of those are part of this process. The regulatory changes: operational permits. A



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systemic witness testing the fire protection systems. What we're relying on the building ownership to do now, we need to be there, we know this. We need to be in place and witness the test to assure that the systems are actually working, and also to provide them support and understanding the importance of these systems work, the understanding of how the systems work and buy-in so that we're all working together towards this common goal of public safety. And I think that's a critical piece of this. And then the way we do this is a migration towards an hourly cost recovery process. So you're only charged for--as opposed to a fee, just a blanket fee, you're charged for the time we spend actually spend interacting with you; the time that we actually spend working through the issues in your structure. Also, as identified with the Washington Adventist issue, we need to have contractor licensing requirements. We need to know that the contractors are licensed, understand what their responsibility is in inspecting these structures, and providing service to these structures, and that's a critical piece that obviously has been lacking. What we're looking to do is locally adapt the 2003 version of NFPA1 and NFPA101, the Uniform Fire Code and the Life Safety Code. We currently operate under NFPA1 is a subsection of Chapter 22, the 1997 version; we have not adopted NFPA1. This, by the way, does not include the retroactive sprinklering (sic) of residential high-rise buildings. And as you recall after the East West Highway fire with the tragic loss of the elderly couple, we came to you saying that that's where we were headed. And we've worked through that and this is where we end up at least at the current time instead of that, and we believe this helps us get our arms around the issues. How do we do this? Well we need to reorganize the Code Enforcement Section. We utilize staffing concepts that reflect our operations organizations. We comply with NIMS. These are uniform folks. We are totally in place to comply with all federal regulations as well as the organizational structure of the fire service today. And I think that's an important piece that these folks are not an appendage but integrated into our operational organization. And of course this reorganization recognizes the specific programmatic priorities that we put in place to deal with this entire issue and to get our arms around it. And then we'll increase supervision and improve our span of control, and this will increase our pool of candidates because we'll be able to reach deeper into the organization. The next page shows you the organization at a macro. The right side is our new organization, and you'll see Fire Code Enforcement under an assistant chief who supervises both Fire Code Enforcement as well as Fire Explosives Investigations. And then a more specific view on the next page of code enforcement, the battalion chief and there is how the organization grows up. The piece that's not proposed in this today is the hazmat piece. We know we've got to get our arms around that but we'll work on it once we get this sorted out. And there are each of the components and the responsibilities that they have. We're proposing a three-year plan implementation that considers the normal attrition of the Fire Rescue Service so that we don't have a direct hit on our ability to put folks on the street, takes advantage of when recruit classes graduate, as well as when new stations open, and our proposed phasing of the four-person staffing, are all taken into consideration there. And then we transition to a unit-based task-oriented assignment - folks who are assigned to specific areas. Not only battalion-based within the county so that they interact with the local fire stations and local fire rescue personnel and establish relationships, but also task-based as far as what their specific responsibilities are; and we think that will provide additional



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horsepower. And then we increase our supervision and implement the use of firefighter [inaudible], in other words going lower in the organization to provide folks who actually become inspectors. And that does provide us some career path through the Code Enforcement section, which is a positive thing. How do we pay for this? Proposal is to amend the existing fee regulation to capture actual program costs. I don't believe they've been amended since the mid 80s. Permit cost of the customer are directly related to the inspector cost; I mentioned that earlier. And all costs are built into the fees that are charged and there's the dollar amounts charged per type of personnel qualification. And then on the next page just to cite that our hourly fee base takes into consideration all the pieces and parts that make this thing happen, so the hourly rate is based on all the loading that needs to be done to assure that these people are properly trained and equipped and have the right salaries and knowledge base and all the pieces they need. And including on the second page there, the fact that supervision, admin staff, the engineers are all part of overhead, and the actual fees are driven by the 130 bucks which is identified on the previous page by the inspectors as well as critically, the operational permits at \$50 per system per year that's required. What are the benefits? Certainly increased public safety is the number one benefit and goal obviously of what we're aiming for here. Increased firefighter safety is also obviously a critical component of that. And certainly the examples that I've cited earlier certainly raise concerns. And that I cited, we actually had a firefighter mayday and came very close to having a catastrophic event there. In addition to that, compliance with Chapter 22 obviously is critically that we get in compliance, we do what we say we're going to do. The program will be self-funded, we believe through the fees. This will give us increased reliability of all the installed systems. Hopefully it will result in higher safety as well as should have a significantly lower fire loss as a result of this. And this has the potential to increase field knowledge with the movement of personnel in and out. And I think the whole--the synergy of the code enforcement concept throughout the whole organization is a real opportunity to help us prevent 9-1-1 calls, to stop the phones from ringing, and to assure that they are only ringing so that we can go out and provide support to the community to prevent injury, illness, or catastrophic event. And increased battalion and [inaudible] command support in the field; currently we have limited use of these folks. Of course they're limited in number, but when we have a catastrophic event, they help us at the EOC, they help us when we do an incident-management team, or the management of any large event, and certainly that's a side benefit of having these folks. And then this allows us to support building code tradeoffs. To have direct discussion with the builders to assure that we're putting in place the best system with the community safety in mind. And I think that this allows us to have that discussion as we work through their building of their new community. Reduce 9-1-1 calls I've already mentioned. In this case cost will generally rest with the users of the service; folks that are requiring the inspections, have inspectable (sic) properties will be required to pay the fees. The fees will be directly associated with the cost of the service, and of course the fees will offset expenditures as proposed. So this a three-year, self-funded systematic plan. It's going to improve our current enforcement deficit, which is the most alarming concern. It will coordinate and increase personnel accession, and the section structure will reflect functionality and geographic work areas; and I think that will be very



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powerful throughout our entire organization. And it matches our personnel complement with the codified inspection responsibilities.

Councilmember Knapp,

Thank you, Chief. I'm assuming there are going to be some questions. I see at least one light. What I was going to ask of Chief Donahue is If you could. If you could walk through a bit of some of issues that Mrs. Praisner had raised, because that's something we talked about at the committee the notion of do we try to do a broader education piece first versus going ahead with the regulation and talking about your three-year phase in, and how we try to reach the most people. And it might be worthwhile just to kind of walk through your thinking as to how you got to where you did versus doing a broader education piece on the front end.

Chief Michael Donahue,

To begin, a lot of the requirements that we're talking about implementing here are already in state law. And that creates a bit of a problem for us in that as state fire marshals are wearing a different hat, we're also responsible for enforcing those issues as a state requirement. It kind of short-strings us a little bit in that we're not allowed to be as flexible in how we deal with any issues that come up with this. So what we want to do with the big portion of this is reach out and touch our community before we start really enforcing this. If you look at some of the staffing analysis particularly for example, high-rises where it says there's 12 staff hours associated with the witness testing of that. That assumption is based on the fact that we go in there and we find the problems that we're finding today or every time we go on a 9-1-1 call to one of those high-rises. That simply ties up way too much of my staff time, that ties up the building owner, and then we walk away with leaving them with a notice of violation of all these things that they have to fix, and then we hit them with a \$1,400 bill. That seems to me to not be the right way to do business. But unfortunately we have no way to outreach and tell people what the requirements are until we know what the requirements are. And that's why we want to implement first. If we do the outreach as part of this and the first year our intent is to be educational. We will go out and we're developing the information now brochures to go out and get the people into the system; hand them the requirements, walk them through the issues; where they have to come into compliance, and what the shortfalls are. And the following year when we go back out, they will have already got their testing done, we're in and out of there; it's a minor disturbance to their normal day-to-day business. Something they would have to deal with anyway because we're going to coordinate it with their systems testing through the industry--their--our trades people. Everybody is there at the same time. We're in and out in two hours tops. What we figure is the best way to do things and it actually minimizes the impact on all the people concerned - of us as the QA process; the trades people who are actually doing the testing; and the building owners who are responsible in making sure that that testing gets done. And that keeps us out of a big brother approach is what we really want to try to avoid here. I know Ms. Praisner was concerned about the--she raised the issue of daycares and whether or not we've reached out and touched them. We have gone through extraordinary measures previously to touch base with everybody we can possibly get our hands on. I sent out information to the building industry. I sent it out to



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AO. We've met with the Commission on Common Ownership. We've talked with the daycare providers. We've met with Jubilee and Interact. We've touched base with everybody. And we recognize that there is going to be some impact on them, but if we spend the first year telling them what needs to be done--and we're in there every year so it's really not that big a deal. The cost implication for them on an annual basis will probably be about \$35. And that's--we felt that really is not owners--we haven't adjusted their fees in a long time, so a \$35 attachment really didn't strike us as being a big deal.

Councilmember Knapp,
Thank you. Now, the questions.

Councilmember Praisner,
Yeah, well I was reacting to page 3 which says that the transition will be over a three-year period, which is fine but the phase-in is notification, et cetera, and that is actually after the fact as far as the regulations being adopted, and that was my concern is that having publicized the regulations only in the executive register. That is a very narrow scope of folks who interact and see that. I had no problem with loba. I'm sure they're aware of these issues and then the loop; my concern was more with the broader community. And I would hope that--you say you've met with the childcare providers; does that mean meeting with the Childcare Advisory Committee and with the Childcare Association in the county as to what is being proposed?

Chief Michael Donahue,
The requirements are not changing. For them what is changing really--

Councilmember Praisner,
--is the fee.

Chief Michael Donahue,
--is that is the fee. And we have a pretty good base when we speak with with--I honestly did not meet with the association--

Councilmember Praisner,
Well I would urge you before--within the week to please contact the Childcare Advisory--

Chief Michael Donahue,
Absolutely

Councilmember Praisner,
--Childcare Association and our advisory board on that.

Chief Michael Donahue,
We do work with the state on a regular basis.

Councilmember Praisner,



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Right, I understand that, but I'm talking about our local folks. What is also a little hard to understand in the packet is where what is being proposed is greater than state law. Is that mean on circle--Circles 4 through 8 that where ever--most of that is the fee structure. I guess it should be Circle 6 through 8, anywhere where it says none that there is nothing in state law; is that what that means? Or it's basically none as far as our current regulations. What I was trying to understand is where--what is being proposed is a requirement greater than what is proposed in state law? That's what I wasn't clear about.

Chief Michael Donahue,
Oh, okay, on page--Circle 6?

Councilmember Praisner,
Yes, 6 through 8.

Chief Michael Donahue,
Yes, ma'am. For example, where it says none on the left hand column--

Councilmember Praisner,
That's none now, yeah.

Chief Michael Donahue,
There is none.

Councilmember Praisner,
In yours? In our--

Chief Michael Donahue,
Or state in some cases.

Councilmember Praisner,
Okay, all right.

Chief Michael Donahue,
Or state in some cases. And those particular--for example, if you go down NFPA 13D, Sections 20 through 27 and 31; there's no requirement in any law right now that deals with the--some of the technical design issues and what happened we are trying to put in place is assurances that these systems will work as designed. We're kind of head of the curve on this one. In this particular area here, in that after council enacted those single-family residential requirement, one of the questions that came up was maintenance of systems. We did a lot of work and a lot of research to the point that we have actually introduced some of the things we discovered here to the national codes and they've adopted those into the national codes. This year is in the appendix, next code [inaudible] will be in the body of the code [inaudible] for that--wait for that to happen.

Councilmember Praisner,



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So that's an area where we obviously are ahead of state law.

Chief Michael Donahue,
Way ahead of curve.

Councilmember Praisner,
Is there another area here where there is nothing in state law--high-rise retrofit; is that a non--

Chief Michael Praisner,
That--there is--there is no requirement in Maryland State Law exempts out all existing structures. So they would not. So we're in some cases going to go after existing structures.

Councilmember Praisner,
The installation of carbon monoxide detectors; is that nowhere in state law?

Chief Michael Donahue,
It is a recommended practice at the national level; it is nowhere in state law, and we want to have that. As a matter of fact everything with have proposed in here is in direct response to an event in Montgomery County.

Councilmember Praisner,
I understand that. I was just trying to understand the difference between what is required in state law where we, as I understand it, have been deficient in not having the code that is consistent with state law and the committee's work requires that regular--your addition to the regs requires a regular cycle now so that we wouldn't find ourselves behind in any of this. The second question is--is more from my work in MFP on fee structure. You're proposing something that is totally new which is no other jurisdiction uses a fee system for this is what Minna's packet says. That means we have a fee-based structure which means we need a fee policy from a standpoint of reserve and in order to sustain it. The requirement to work with Tim Firestone and OMB to have a fee policy so that there is a reserve, et cetera. The other concern I have is a fee means that fee can pay for those services but you can't use those personnel for other than those fee-based services unless they are in essence general fund funded. And the fees cannot be used for other functions. So, in essence, that requires a little more recordkeeping and accounting than perhaps might have been anticipated. But I would expect that the MFP and Public Safety Committee will see a fee policy as far as the reserve and the whole policy associated with these fees. In other words, the money generated from these fees can only be used for this function. It can't be used for other functions, which says that your hiring personnel for these fees and these are fee-based functions that we have little experience, I should say, because you have some fees now that haven't been updated. But we have little experience with the cross--with monitoring how it is actually going to work. I think you've done incredible work in trying to estimate this and tie it to hours rather than personnel, et cetera. But it's going to take the three-year implementation, if nothing else, to get this so that you really know. I think it's



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very important in this process then that we get the information that will justify both the fees and that these folks are there relative to fee-structure, which means the fees are going to have to keep pace with the cost of this personnel--complement. So that means not only reviewing the fees on a regular basis as well as the state law on a regular basis, but making sure that there is an accounting on the cost versus fee versus function so these folks can't do anything else, or the money can't be used for anything else in essence. So I think that needs to be discussed. We had some conversation also about the expansion of personnel meaning that we no longer will have a one-stop shop from a standpoint of--and part of the fire inspection functions are more directly related to what permitting services does. And I'm a little worried about pulling--separating that because we're encouraging a one-stop shop for the things that folks have to come in for permits. Obviously the inspections--ongoing inspections of buildings don't really need to be near permitting services. But I'm worried and would like to have better assurances that we aren't--that to the extent we can explore that, that you still maintain some kind of fire presence within permitting the one-stop concept.

Chief Thomas Carr,

If I could just comment on that. We have an incredible relationship with DPS. It's a stronger--it's stronger than it's ever been. These folks work hand in hand day in and day out. They resolve customers' issues as if they're one organization. This proposal keeps fire and DPS together. It moves out the Health and Human Services fees.

Councilmember Praisner,

Right. You're right. My concern is that they're not all together again to the extent it keeps fire together. My point--I said it wrong. My point being some of your inspectors don't necessarily have to be physically with permitting service because they're not doing the day-to-day new construction. Somebody has come in for a permit whereas moving the HHS out means that some of those, you know, we don't have a one-stop shop for all functions so, you know, I would hope--.

Councilmember Knapp,

You're looking for discussion about how to--what new folks within Code Enforcement may not necessarily need to be on site that could potentially allow space for HHS to be in that one-stop shop.

Councilmember Praisner,

Right. Yeah, to keep the one-stop concept is basically--that's why I said it wrong. Thank you, Mr. Knapp. I'm not clear how these folks will interact with volunteers--with the volunteer efforts because certainly volunteers do a lot of education and outreach with folks and there are a variety of things associated with some of these buildings and issues that aren't directly related to high-rise but may be in the neighborhoods where volunteer corporations are functioning. So would you comment on that?

Chief Thomas Carr,

Absolutely. And of course that's an important part of our mission is assuring that we operate as a combined service and take advantage of each of the components of the



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service. This will continue to support the volunteer efforts in those areas directly as it does today. Absolutely no change in that except that it will provide additional horsepower for the volunteers, additional resources for the volunteers, and support that's required that we actually all need career or volunteer in this area. So I think it's nothing but a positive as far as that goes. And it will in no way diminish responsibility of volunteers or take away from the effort that needs to be done.

Councilmember Praisner,

I'd like to have a better understanding of how the volunteers have a role in all of this and how you're working with the individual corporations on that issue; if you could provide that. Obviously, with the ongoing need to inspect buildings, there is an ongoing workload that isn't tied to new construction and new buildings. However, I think the issue of--again when you have a fee-based function as we've done with permitting service, there is some ebb and flow in how many personnel you need. This becomes more challenging when you're talking about bringing on classes or fire through the academy, et cetera, when there's sworn personnel as opposed to a small cadre that might be non-sworn and therefore might provide you some swing capacity. It would seem to me that over the three years before we get to a judgment of adding class--adding a class at the academy associated with this, we need to have a better accounting of whether your personnel workload experience tracks with--and your fees track with how many folks we're bringing on board. Because fewer might be better in the beginning until we know we need that that. Obviously, your documentation speaks to that but I think we need an accounting to make sure that we know that there is an ongoing justification from an ongoing workload perspective, not the spikes that might be associated with the same new construction.

Councilmember Knapp,

[inaudible] chief--that was a real concern on the committee's part as well, and so one of the things that we asked for was really a staffing layout over the course of the three years. Also as it relates to potential phasing a four-person staffing, if that's other options that are out there, and looking at what needs to be done as it relates to expansion of EMT services. And so that's something both from the cost estimation, the staffing analysis, and what the staffing requirements for Fire and Rescue will be, in addition to not only this but those pieces, because I think there was a real concern of the committee, is how do you balance those pieces and not end up either way to high or way to low.

Councilmember Praisner,

Right. Well and especially because these personnel are fee-based. And that's--to have sworn personnel fee-based is more complicated than just hiring term positions that you add or subtract relative, you know, to the fees that might be associated with permitting service pieces of the function. So I think that's going to be the delicate and critical piece because you've got to do an accounting that allocates the fees to the personnel for these functions, not to the other functions that were talked about like the four-person staffing or the EMT ramp ups. Those would not be associated with this function. So it's going to be more challenging the accounting functions.



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Chief Thomas Carr,

And if I could just not a couple things: one, is we're using technology to help us track down to the minute the workload, and we're implementing the firehouse program that we use for our fire reporting as we speak, will be implemented in this area. And we think that that provides powerful opportunity to have good documentation. Also, we ebb and flow as an organization as we may with the fees, and I run through 50 folks who retire in whatever form a year. So there's a lot of capacity to reabsorb positions if we were to get in that situation here. Also, please note that we believe these are very conservative numbers. And we will work through as we implement and see the real experience is going to tell us where we really need to be. If we have too many we have plenty of capacity to absorb in that [inaudible].

Councilmember Praisner,

That's a good point. The whole issue though is because these are fee-based; it carries some other responsibilities. And I think when you're talking billable hours so to speak, as opposed to--and folks whose buildings require extra work, extra time paying as opposed to someone who doesn't, whose inspection goes smoothly, et cetera. It's obviously going to keep even more and more detailed recordkeeping. The only other comment I have is I'm concerned by all of the discussion that I think is still outstanding about the issue of street designs, et cetera. I'm not sure I understand where we are. If you're talking about a committee still to discuss this, I think this has to come back so that the variety of council committees on that issue who interact on this issue, whether it is T&E or PHED with the planning board of public safety, we may have to have a full council rather than individual committees. But just as one--I think the question is having all departments engaged in the process but not one department making the determinations for a variety of issues without understanding the implications whether it's the road code or the designs for development that--site plans, et cetera, that folks may be signing off on down at Park and Planning. So we--I think we still have significant work to do on that issue. Clearly you all agree because of the way it's phrased. But I'm not sure I understand and would hope that we could get further information from both the planning board and the Department of Public Works and Transportation about how they see the timetable for this and what is happening in the interim from a standpoint of sign off or authority that raises some significant concerns to me.

Chief Thomas Carr,

If I could just comment on the last piece: you all supported and we've put in place additional staff to assure that Fire Rescue is signing off, and in fact, Park and Planning does not accept plans unless we've signed off on them now and so that leaps forward in that area. And we're working aggressively and there's a huge workload in that area to do that and to meet those needs. So the immediate we've dealt with, the executive is bringing forth of the committee or establishing the committee that will develop obviously the design manual for this so that we're all on--ultimately on one sheet of paper.

Councilmember Praisner,



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Well but the design manual speaks to, I think, assumptions being made internal to the group about what the design should be. I'm not sure that that should be done without vetting and conversation at this table and with the planning board members and the broader public who may be involved in this, including developers, et cetera. Some of it is inconsistent with the design standards that we're talking about or could be inconsistent with what is being built, et cetera. Some of it may just be striping and no parking signs, et cetera, but there could be other significant implications both for existing roadways and the widening therefore which is inconsistent with policies that we've talked about to make them more pedestrian friendly, et cetera. So I think we need to have a broader conversation than just a task force, and I would like to understand the timetable for that; that's all.

Councilmember Knapp,
Ms. Floreen.

Councilmember Floreen,
Well Ms. Praisner has identified the issue that I'm very interested in and absolutely and totally unclear on. Tell me what these regulations that we have in front of us say on the issue of road design.

Chief Michael Donahue,
These regulations under Chapter 18, which is now existing in state law, require minimum clear width of--

Councilmember Floreen,
Tell me where this--what's in front of us that includes--says that.

Chief Michael Donahue,
It's actually--it came to us as a sidebar issue. The NFPA1, which was adopted into state law in August of 1999, contains the requirements for the road widths and fire department access.

Councilmember Floreen,
And that's a national standard that's--

Chief Michael Donahue,
NFPA--

Councilmember Floreen,
That's been adopted by the state--

Chief Michael Donahue,
It's a uniform fire code, it's a national standard, and it has been adopted by the state and has been in for approximately 7 years. We did not make any changes to that portion we just proposed to adopt NFPA1; quite honestly it wasn't even on our radar screens as an issue until we heard back from the industry and also from other agencies



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in the county that it was going to present a problem with them--to them, because it had been in law for so long we didn't even think of it as a big deal. It's obviously come to our attention and we have been dealing with it. We're now proposing to change the state law. State law has to be the minimum starting point. But we are requiring or asking to do is if we adopt NFPA1 then the appeal process and the changes no longer go to the State Fire Prevention Commission for appeal or resolution, it stays within Montgomery County because now we have the authority to look at another portion of NFPA1 which is performance-based design. It doesn't require us to go to the state to ask permission and look at it from that perspective; we can do that internally. The modification process right now within Montgomery County generally is you submit a modification by Thursday afternoon and you're heard the following Tuesday. And that is where we get to by adopting NFPA1, is that we now have that process internal to Montgomery County, and we don't have to go the state for that.

Councilmember Knapp,
Which gives you the flexibility that you need.

Councilmember Floreen,
If I could finish--if we proceed to adopt different standards; I mean, right now there is a road code such as it is, and the Park and Planning Commission applies its own standards, DPWT has its objectives, and you have your goals. And I guess you all argue about it periodically; I know you do. Does this permit the county to adopt a different regulatory standard that would supersede, what is it, NRPA1, or whatever the state--

Chief Michael Donahue,
NFPA1 is--because it's adopted in the state--a minimum acceptable standard. However, what it does do for us, because if you look at it from a strictly prescriptive enforcement base where it says minimum 24 clear width, we would be stuck with that. But NFPA1 has performance-based option in there; if we go and, for example, we determine that arbitrarily let's say we're going to restrict window sill height to 28 feet on single-family detached structures because that puts us in position to use ground ladders instead of having to use aerial apparatus, we no longer have to stay with the 20-foot clear width; we can narrow that down because we only need to use an engine company perhaps in the front because we have made some sort of compensatory action and it's all based on a performance standard as opposed to a prescriptive standard.

Councilmember Floreen,
So in other words it would be site-specific.

Chief Michael Donahue,
Yes, ma'am.

Councilmember Floreen,
So you would be building in an extra appellate process?



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Chief Michael Donahue,
No, ma'am.

Councilmember Floreen,
That you start from a [inaudible]--

Chief Michael Donahue,
We start from the performance based. That's part of what we're proposing to do and actually we've had a lot of discussions on this portion with building industry also talking about using some of the computer modeling so that we know the exact width of a fire truck and what the turning radius is, and we can put that on the plans before it even gets to the point of moving the first bulldozer full of dirt. We already know where the fire trucks will fit. We define our operational perimeters around the fire trucks that we would need, we put them on the plan--in the planning process we fit them so that they will fit. And if we can narrow the streets down, change turning radii, all those things that all us to work within the requirements the other agencies have, such as the impervious surface requirements, storm order management; it makes it much easier for us to deal with. Right now because we are enforcing it from a state level, we don't have that option.

Councilmember Floreen,
So this will not preclude for the work on the subject. I mean that's what I'm trying to under--because I see nothing in these pieces of paper that allude to this apart from the comment that was provide--.

Chief Michael Donahue,
We are not changing anything in Chapter 18 because that's adopted in the state and that's the minimum requirement we have to start with.

Councilmember Floreen,
So that's occurring as you say a sidebar.

Chief Michael Donahue,
These regulations don't affect that at all.

Councilmember Floreen,
Why was there so much comment about it if these regulation are not affecting it.

Chief Michael Donahue,
Well certainly the discussions I have had with Park and Planning and other agencies, most of them are unaware the requirement was in place and has been in place since 1999.

Councilmember Floreen,
I guess everybody was.



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Chief Michael Donahue,

I think it caught everybody by surprise quite honestly. It certainly caught us by surprise that it created such an issue. But it does provide us with a great deal more flexibility in dealing with the issue without having to rewrite significant portions of the Montgomery County code.

Councilmember Floreen,

So I guess this is triggered by the preliminary language here that simply says you're adopting NFPA1.

Chief Michael Donahue,

Yes, Ma'am, correct.

Councilmember Floreen,

And that is what starts the conversation.

Chief Michael Donahue,

Yes, ma'am. Because right now it is completely out of our hands.

Councilmember Floreen,

Well, yeah, all right. So this will not preclude the further work that needs to be done on this issue and those conversations.

Chief Michael Donahue,

It sets the stage for further work. It facilitates it.

Councilmember Floreen,

All right. Okay.

Councilmember Knapp,

The other thing that we've done, just so you know Ms. Floreen, is we're waiting for a memo that clarifies all of the things that can happen after--once we've adopted NFPA1 because we thought to kind of leave it chance everybody had some nice conversations was fine, but we wanted to codify it to some extent, so there's a memo that should be forthcoming from, I believe, the CAO that talks about the task forces that are meeting, and what the next actions are as it relates to what Ms. Praisner was asking as well. And so we should be seeing that I'm hoping sometime this week.

Councilmember Floreen,

Everything will be clarified, good.

Councilmember Knapp,

That was the goal.

Councilmember Floreen,

I'm glad to hear that. I have waiting for that memo for four years.



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Councilmember Knapp
Mr. Andrews.

Councilmember Andrews,

Thank you. Rest assured, Ms. Floreen, this preserves your option for further work. I wanted to just mention there's a very good chart in here on Circle 2,331. You are listening, good - circle 131. there's a--no 1--yeah it is 131. There's a good chart that shows an estimate of the staffing ebb and flow needed over the next several year, which they can explain if necessary. But there are a lot of moving parts going on here because of the implementation of four-person staffing that began this year. Because of the addition of four new fire stations in the next four years that will require about 100 new permanent staff or so, and then this. So there is--one of the advantages of having sworn personnel is the flexibility to move them in and out of different position if there is some difference in their estimate of what is needed. They can be used in other areas. Fewer people could be brought on if necessary in the future if we find that. So that preserves that flexibility. And I think this chart is helpful in showing where the department is. We are--through a lot of good work by the department, we are about where we hoped to be right now. I'm catching up and the challenge will be to keep up over the next 4 years, which will probably require an extra class in two or three years for a couple of years at least to keep up. But those are the additional comments I wanted to make. I think they've put an extraordinary amount of effort into this to try and anticipate all the different issues, consult with all the interested parties, come up with a well thought-out, flexible plan that really addresses an issue that we know is there based on what they find when they go out in response to calls and find that most of the time there are problems with the way the buildings are being maintained. If they're not being maintained the way they need to be for the people to be safe, and that human nature being what it is, unless there is someone going out there keeping an eye on it, and again they've emphasized that they are going out there with a light hand first year to encourage people to be aware of what they need to do. But this is important business. A lot of lives at stake and I think this is a very solid plan, well thought out and will save lives.

Councilmember Knapp,

I too would thank Chief Donahue and Chief Carr because I think--and I appreciate my colleagues questions because there are a lot of pieces in here and there are a lot of moving parts; and I think Chief Donahue and his team have done a very good job in with anticipating many of the questions because we ask a lot of those and many more during the work sessions that we had. I think we clarified some points and there are still some questions as Mrs. Praisner indicated that are going to be answered, and I think the issues as relates to roads is one that we all recognize as one that will take us a while to get addressed. But I think this builds in some flexibility to get there from. And so I would urge you to get with Minna and do follow up to get some of the answers to the questions that Mrs. Praisner had asked, and barring any additional questions today, this is scheduled to come back next week. If there are any other questions the council may have, contact me, contact Minna, and we can make sure they get answered before we



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get back in session next Tuesday. But I again extend my appreciation because as Mr. Andrews indicated, I think this will save lives and get us down a road that frighteningly we're not already down. So thank you very much.

Council President Leventhal,

All right. Thank you Chief Carr and thank you Mr. Knapp for leading us through this session. The council stands in recess until the hour of 1:30.

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MUSIC

Council President Leventhal,

Good afternoon, ladies and gentlemen. This is a Public Hearing on Expedited Bill 39-06, Streets and Roads – Fees – Preliminary Subdivision Plans, which would authorize the Department of Public Works and Transportation to set fees by regulation for the review of Preliminary Subdivision Plans, and generally amend the law governing streets and roads. The Transportation and Environment Committee is scheduled to take up this bill on October 26th at 10:15 in the morning. The record will close at the conclusion of the hearing. We have one witness, Director Art Holmes. Please join us.

Arthur Holmes, Jr.,

Good afternoon. For the record, I'm Arthur Holmes, Jr., Director of the Department of Public Works and Transportation. I'm here today on behalf of County Executive Douglas Duncan to testify in strong support of Expedited Bill 39-06, Streets and Roads – Fees – Preliminary Subdivision Plans and Subdivision Regulation Amendment 06-02. These amendments will allow DPWT to comply with the terms of Subdivision Regulation 05-06 adopted by the County Council in February of 2006, February 28th, by hiring more staff to expedite the review of preliminary plans as required by SRA5-6. SRA5-06 requires each county agency to review and provide recommendations on subdivision plans within thirty days after the planning board transmits it to the agency. Currently, DPWT only has two work years to review these plans, and a significant backlog already exists. In addition, DPWT participates in the review of other types of plans at – at different phases of the development process –

(ELECTRONIC TONE FROM MICROPHONE)

Unidentified Speaker,
Keep going.

Arthur Holmes, Jr.

Oh, okay. I thought I was talking real slow.

LAUGHTER

Arthur Holmes, Jr.

-- which affect turnaround times and negatively impacts our ability to proactively meet the -- meet with applicants. In order to adequately comply with the terms of SRA05-06, it would be necessary to add additional staff. Approval of Bill 39-06 and SRA 06-02 will allow DPWT to impose a fee on applicants for review of their plans and allow the county government to hire additional staff to perform required reviews within the specified time constraints. The costs of plan reviews are currently paid from the general revenues of the county, but are more appropriately paid from fees imposed on those who directly and specifically benefit from these services. This increasing staffing for the functions within DPWT were strongly supported in a development review improvement project conducted by management partners for the Park and Planning Commission earlier this



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1 year. The current lack of adequate staffing in DPWT for these plan reviews has
2 contributed to delays in responding in a timely manner – manner to the Planning Board
3 and other agencies, and the development community. We've already developed a draft
4 fee schedule and the related executive regulation to implement the provisions of this bill.
5 In closing, I again urge the Council to approve Bill 39-06 and SRA 06-02. We look
6 forward to working with the T&E Committee and the County Council in the deliberations
7 on this issue. Thank you again for allowing me to comment.

8
9 Council President Leventhal,

10 Thank you. We look forward to working with you. There are no questions. Agenda item
11 8 is a Public Hearing on Subdivision Regulation Amendment 06-02 – Fees – Preliminary
12 Subdivision Plans -- which would authorize the Department of Public Works and
13 Transportation to set fees by Method 2 Regulations for the review of Preliminary
14 Subdivision Plans and generally amend the law governing streets and roads. A
15 Transportation and Environment Committee work session is tentatively scheduled for
16 October 26th at 10:15. The record will close at the end of the hearing. We have one
17 witness, Mr. Gregg Russ, representing the Planning Board. Mr. Russ.

18
19 Gregg Russ,

20 Thank you, Mr. President. For the record, Gregg Russ from the Montgomery County
21 Planning Board. The Planning Board reviewed Subdivision Regulation Amendment
22 No. 06-02 and Expedited Bill No. 39-06 at it's regular meeting on October the 19th of
23 2006. By a vote of 4 to 0, the Board recommends that the proposed tax amendment be
24 approved as modified, and included as a separate attachment to the technical staff
25 report. The Expedited Bill authorizes the Department of Public Works and
26 Transportation to impose a fee for costs incurred reviewing preliminary subdivision
27 plans of these. Subdivision Regulation Amendment requires an applicant to provide
28 evidence of payment of the DPWT fee to Park and Planning at the time of application
29 for review of preliminary subdivision plans. The Board acknowledges that the subject
30 request is not precedent-setting since the Department of Permitting Services currently
31 charges fees for the costs incurred in reviewing site plans. Further, plans for preliminary
32 subdivision review already require a receipt from DPS that storm water management
33 review fees have been paid. As such, the Board believes that the subject request by
34 DPWT would parallel the existing process used with storm water management review
35 fees. Minor modifications to the -- the SRA language have been proposed through the
36 cooperation of DPWT and the Planning Board staff and, again, have been included as a
37 separate attachment to the technical staff report. Thank you.

38
39 Council President Leventhal,

40 Thank you very much. There are no questions. Agenda item No. 9 is a Public Hearing
41 on the Zoning Test Amendment 06-24 which would amend the zoning ordinance to
42 exclude the display of furniture for sale as a home occupation, terminate the display of
43 furniture for sale as a home occupation, and generally amend home occupations. We
44 have seven witnesses: Mr. Gregg Russ, Councilmember Jeffrey Slavin from the Town
45 of Somerset, Iman Huschmand, Celesta Jurkovich, Lloyd Guerri, Jim Humphrey, and



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1 Norm Knopf. Let's -- let's do the first panel: Mr. Russ, Mr. Slavin, Iman Huschmand, and
2 Celesta Jurkovich. Our first witness is Mr. Russ. Please proceed.

3
4 Gregg Russ,

5 Again, for the record, Gregg Russ from the Montgomery County Planning Board. The
6 Montgomery County Planning Board reviewed Zoning Ordinance Text Amendment
7 No. 06-24 at it's regular meeting on October 19th, 2006. The Board unanimously
8 recommends the following comments for the Council's review of the Text Amendment.
9 The Board agrees with the sponsor of the Text Amendment that the operation of a -- of
10 future showrooms/display as a home occupation, in the same manner as a commercial
11 establishment, is inappropriate. The Text Amendment should not be adopted in its
12 current form, however, because it is both over inclusive and under inclusive. It is over
13 inclusive because it would eliminate home occupations that involve displaying furniture
14 made on the premises or consisting of small items delivered by UPS, as well as large
15 pieces delivered in moving vans. As drafted, it would have unintended consequences
16 for home occupations that pose no problems for the neighbors. It is not the occupation
17 as such that produces the problem, but the effects of the manner in which it is practiced
18 as a -- as a particular place -- at a particular place. It is under inclusive because it
19 targets one activity at -- at one site that produces adverse community effects that may
20 occur at other sites within different home occupations, such as excessive deliveries in
21 large vans or conversion of lawns to parking spaces which would be appropriately
22 addressed through the Special Exception process. In discussing the proposed
23 amendment with the Department of Permitting Services, it appears that the principle
24 issues of concern to the community at the site in question, and which inspired the
25 amendment, can and should be effectively addressed through enforcement actions.
26 Therefore, the board recommends that a broader, more comprehensive review of -- of
27 home occupation regulations be undertaken with a focus on negative impacts including,
28 but not limited to, truck traffic, excessive paving for parking, and inappropriate lighting.
29 I'll be happy to answer any questions you may have. Thank you.

30
31 Council President Leventhal,

32 Thank you very much. Our next witness is Councilmember Slavin. Welcome.

33
34 Councilmember Slavin,

35 Good afternoon. I'm delighted to be here today on behalf of the Somerset Town Council
36 to testify in support of Zoning Text Amendment 06-24, introduced by our District 1
37 Councilmember, Howard Denis, which was endorsed unanimously by our Council at our
38 last town meeting earlier this month. Enactment of the Zoning Text Amendment would
39 result in eliminating as a home occupation the display of furniture for sale in a home or
40 at an offsite location. Councilmember Denis drafted this legislation as a result of the
41 furniture showroom operating in a house at the corner of Hunt and Wisconsin Avenues
42 in Chevy Chase, just a few blocks from our town and in the heart of an area we call the
43 "Green Mile" stretching all the way from Somerset to the beginning of the Bethesda
44 business district. We believe that this type of business is inappropriate for a single
45 family residential neighborhood, and that it rather should be situated in a commercial
46 location. We are seriously concerned that if the county continues to allow this enterprise



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1 to do business in Chevy Chase West, a foot in the door will be created that would then
2 encourage other commercial operations to move into our residential neighborhoods,
3 stretching along Wisconsin Avenue between Bradley Boulevard and the Somerset
4 House high-rise development. This would clearly have a deleterious, direct effect on the
5 Chevy Chase West, Drummond, Chevy Chase Village, and Somerset communities, not
6 to mention the many other areas that belong to the Citizens Coordinating Committee on
7 Friendship Heights of which are -- we are very active members. A great many of our
8 residents have complained to us that the existence of this furniture showroom, as
9 allowed by the county, creates innumerable problems relating to traffic, safety, and
10 health; and that if we don't put a stop to it now, other similar operations might easily
11 come into our communities and lead to a total disaster. We are confident that the
12 Council will understand this and help us by supporting this vital Zoning Text
13 Amendment; and thank you for the opportunity to speak.

14
15 Council President Leventhal,
16 Thank you for your testimony. Iman Huschmand.

17
18 Iman Huschmand,
19 Good afternoon.

20
21 Council President Leventhal,
22 Good afternoon.

23
24 Iman Huschmand,
25 Ladies and gentlemen, my name is Iman Huschmand for the record. I reside in 4601
26 Hunt Avenue in the community of Chevy Chase West. My sister and I own and operate
27 a lifestyle design business, operated from my residence. When I purchased my home, I
28 wanted to transform it into my own dream home. I decided to utilize the unique tastes of
29 my sister and her design skills. Together, we transformed a typical 1950s style rambler
30 into a shining example of postmodern design, with a black exterior and brushed
31 stainless steel throughout the house. This spring we began operating our design
32 business. The company is based around my sister's design ideas. We do not sell any
33 furniture, home furnishings, or anything else related to the home. We sell interior and
34 lifestyle design services that are tailored to each specific client. Therefore, none of the
35 furniture or other items in 4601 Hunt Avenue are available for sale. The magazines and
36 catalogs at that location serve to provide design ideas to our clients. I have not and do
37 not intend to sell my furniture to anyone. Ever since the renovations on my residence
38 were complete and even before Sogol Décor began operations, the neighborhood
39 sounded their alarm bells about my house. The crux of these complaints is that my
40 house does not blend into the neighborhood; and, I'm afraid, neither do I. Over the past
41 few months, the neighborhood has, at every step, tried to stop my efforts to reside in my
42 home. They have embarked upon a crusade to prevent me from enjoying the same
43 socioeconomic benefits enjoyed by millions of other Americans; namely, to live and
44 work from their home. The latest attempt by Councilmember Denis is blatantly aimed at
45 me, my home, and my life's work. The text of Mr. Denis' proposed amendment is vague;
46 however, I fear that it is only the latest step in an attempt to drive me from my home.



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1 The neighborhood has tried to use the false cover of furniture sales to attack me, my
2 home, and my life. I fear that the real reason for their attacks is the appearance and
3 color of my residence, and sincerely hope that it is not the appearance of my -- or color
4 of my skin. Thank you.

5
6 Council President Leventhal,
7 Thank you for your testimony. Ms. Jurkovich.

8
9 Celesta Jurkovich,

10 I'm Celesta Jurkovich of the Chevy Chase West Neighborhood Association,
11 representing more than four hundred homes in an unincorporated area between the
12 Friendship Heights and Bethesda CBDs. Wisconsin Avenue, our eastern boundary, is a
13 major part of the Green Mile. We depend on the County Council and county agencies to
14 protect the Green Mile and the integrity of our R-60 residential area. Located between
15 two business districts, we're a prime area for commercial infiltration. Without this ZTA,
16 any residential neighborhood could face similar commercialization because DPS has so
17 broadly interpreted the home occupation provisions. DPS decided that a furniture show
18 house showroom in Chevy Chase West is an acceptable home occupation. We believe
19 this interpretation is flat out wrong and a dangerous precedent for all residential areas in
20 the county. The DPS-approved furniture showroom or show house is a commercial
21 operation no different that Roche Bobois or Maurice Valence in goals and processes. In
22 fact, one of the vendors whose products are displayed at this location equated its
23 showroom at the Washington Design Center to this show house in our residential
24 neighborhood. It appears DPS will consider any business appropriate unless the
25 Council has specifically prohibited it as a home occupation. This ZTA is necessary to
26 make even clearer that such enterprises are not appropriate home occupations. This
27 precedent is unfair to neighbors, and it's unfair to competitors of such businesses that
28 operate properly in commercial zones with their higher costs. I've provided you with
29 some photos of the property, formerly a brick rambler. It's been painted black, the grass
30 removed and replaced with gravel and cement which could facilitate parking, and
31 commercial-looking lighting added around the perimeter of the property. In addition, a
32 Wisconsin Avenue address is used rather than 4601 Hunt Avenue which is its tax
33 identification address. In the copies I've given you of its website in print ads from these
34 magazines, some with circulations of 80,000, you'll see the business invites potential
35 clients to visit its show house at a definitive luxury address just down the street from the
36 new Friendship Heights stores. One visitor to the home this summer found furniture on
37 display throughout the first floor of the one-story home complete with price tags.
38 Furniture could be ordered, and the furniture shipped from another location. Because
39 furniture lines change periodically, however, displays must be updated; and those
40 deliveries would occur by tractor trailer, as was done to set up the house originally. The
41 Planning Board noted problems with the Home Occupation Provisions and
42 recommended a comprehensive study of them. We need the immediate ZTA relief while
43 any such study takes place. Immediate closure of the showroom will result in little
44 economic harm to the owners, as the furniture can be moved to a more appropriate
45 commercial location for its sale. Thank you.



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1 Council President Leventhal,
2 Thank you very much. Mr. Denis.

3
4 Councilmember Denis,
5 Thank you, Mr. President. I want to thank all the witnesses for their testimony. I
6 sponsored the Text Amendment to address community concerns about what I believe is
7 a misuse of the home occupation category. I am open to suggestion as to how we can
8 rectify the situation. I'm very pleased with the testimony and the comments from the
9 Planning Board, especially that part which starts out, "The Board agrees with the
10 sponsor." That's the part I like best. The Planning Board clearly recognizes the difficult
11 nature of the problem. Interpretation of the zoning ordinance and enforcement of its
12 Home Occupation Provision are areas that I would like to see explored further at the
13 discretion of Mr. Silverman and the PHED Committee, perhaps this Thursday. And I do
14 have a specific question for Mr. Zyontz, if I may. Mr. -- Jeff, in your packet that you're
15 going to be preparing, are you going to include all aspects in your analysis of the points
16 raised by the Planning Board and my own observations and comments that were
17 made?

18
19 Jeff Zyontz,
20 Yes, and I did listen to the Planning Board hearing itself and was -- had the staff report
21 available before it went to the Board. Also, the DPS will attend the hearings, the work
22 session on Thursday.

23
24 Councilmember Denis,
25 Thank you very much, Mr. President, Mr. Zyontz.

26
27 Council President Leventhal,
28 Ms. Floreen.

29
30 Councilmember Floreen,
31 Thank you. Mr. Huschmand, is the name of your company Sogol Décor?

32
33 Multiple Speakers
34 \INAUDIBLE\

35
36 Iman Huschmand,
37 Yes, it is the name of --

38
39 Councilmember Floreen,
40 That's the name of it?

41
42 Iman Huschmand,
43 Yes.

44
45 Councilmember Floreen,
46 And you're telling us that you not selling the pieces in this structure?



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1
2 Iman Hushmand,
3 Correct.

4
5 Councilmember Floreen,
6 But aren't you displaying them as an example of what can be ordered?

7
8 Iman Hushmand,
9 When you refer to a display, what-- what do you mean by that?

10
11 Councilmember Floreen,
12 Well, having them out so people can see them.

13
14 Iman Hushmand,
15 If it is -- well, I -- I live in the house.

16
17 Councilmember Floreen,
18 You do?

19
20 Iman Hushmand,
21 Therefore, I mean -- you know, that's what I mean by display. And if anybody laughs at
22 the way I understand, I'm not -- I didn't -- was I born and raised here? So my English is
23 not perfect. So that's why if I ask, it's just clarification on the issue. So I apologize if I
24 didn't understand, but by "display" I just -- when it's something I live in and I use -- like
25 for example in your house, is it for display, if I may ask, you know?

26
27 Councilmember Floreen,
28 Not really.

29
30 Iman Hushmand,
31 Then it's the same thing as me, because --

32
33 LAUGHTER

34
35 Iman Hushmand
36 Because --

37
38 Councilmember Floreen,
39 You're all welcome, but

40
41 LAUGHTER

42
43 Iman Hushmand,
44 Because -- and everyone is welcome at my house too, you know. And so that's why I
45 don't understand -- like if it's a display, depends how you define the word display.



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Councilmember Floreen,

Okay. That's why we're all lawyers too. Is it a show house?

Iman Huschmand,

It is a show house. It's a show house in the sense that it's a house that we like to show to whoever is interested in seeing what kind of style of design that my sister and I put forth.

Council President Leventhal,

I'm going to request of audience members as best you can, we try to provide a respectful space for all witnesses. We listen carefully to all witnesses. We consider all points of view. I'm going to request that audience members not react to any witness.

Councilmember Floreen,

Okay. But we've been provided with something, I guess is a brochure that you provide to folks. Ms. Jurkovich gave it to us. It looks like – like this.

Iman Huschmand,

That's our website.

Councilmember Floreen,

That's your website. Okay. Okay, so that defines your services. So your dispute is that you're not actually selling those individual pieces at your home?

Iman Huschmand,

Correct.

Councilmember Floreen,

Okay. Thank you.

Iman Huschmand,

Never have.

Councilmember Floreen,

Okay. Thank you very much.

Council President Leventhal,

Okay. There are no further questions for this group. We thank all witnesses for their testimony. The next group includes Lloyd Guerri, Jim Humphrey, and Norman Knopf. Mr. Guerri, you're first.

Lloyd Guerri,

My name is Lloyd Guerri. I'm here on behalf of the Citizens Coordinating Committee on Friendship Heights which supports Zoning Text Amendment 06-24 proposed by Councilman Denis. It would ban the display of furniture for sale in the home or at an offsite location as a home occupation. We do not oppose home occupation. What we



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1 have here is a not-uncommon-legislative issue where there is legislation; where it's not
2 quite working the way it was intended to work; and where, in our view, it needs
3 tweaking. We support the legislation because we think it is very important to maintain
4 the residential character of residential neighborhoods. Put another way, we think it's
5 unacceptable to put commercial businesses in residential neighborhoods. We think that
6 if you were to poll people near where you live and ask them, as home owners, if they
7 believe it's appropriate to have a furniture showroom in a nearby residence as a home
8 occupation, they would look at you and wonder why you had to even ask such a
9 question. We really believe it is a no-brainer. This is -- this is very much like having any
10 other kind of retail business forcing its way into a residential neighborhood. We further
11 support ZTA 06-24 by Councilman Denis because we believe, as others have said, that
12 it's important to protect the Green Mile. There is constant incursion -- we've had three
13 issues over the last eight to ten years of businesses working their way into the
14 neighborhood. Commercial space is expensive. It's in Friendship Heights, it's in
15 Bethesda, it's along River Road; and there's a constant push on our neighborhood.
16 We've got to be vigilant. Finally, I'd like to say that I disagree with the -- with Mr. Russ to
17 the extent he suggests that this needs more study. This is really a surgical amendment,
18 a correction of something that was never intended by the legislation. We believe that it
19 can be addressed without further study. Thank you.

20
21 Council President Leventhal,
22 Thank you. Mr. Humphrey.

23
24 Jim Humphrey,
25 Good afternoon, Council members. For the record, my name is Jim Humphrey,
26 Chairman of the Planning and Land Use Committee for the Montgomery County Civic
27 Federation. On Wednesday evening, October 11th, the Federation's Executive
28 Committee voted unanimously to support the legislation because it was our feeling, like
29 it is of the Chevy Chase West Neighborhood Association, that what is essentially a retail
30 business has no place in a residential neighborhood. We are, as you are all, I'm sure,
31 well aware, the Federation strong supporter of master planning process, and I think
32 almost every master plan in the county advocates preservation of existing
33 neighborhoods. So we're strongly in support of this, and we appreciate the efforts of
34 Councilmember Denis to come so quickly to the aid of our association that felt there
35 was some legislative remedy necessary for this issue. I did testify over at the Planning
36 Board, and was there for that discussion. I'll defer to my colleague, Mr. Knopf, who, I
37 think, is going to make a suggestion as to an amendment in additional wording that
38 could be added to provide us with an immediate remedy for the kind of situation that's
39 occurred in Chevy Chase West while we do take the time, as the Planning Board
40 suggested, to have a comprehensive look at the Home Occupation sections of the
41 county code, which I personally think is necessary also, would be available as Chairman
42 of the Planning and Land Use Committee for the Federation for that effort, when and if
43 the new council gets to that. Thank you very much.

44
45 Council President Leventhal,
46 Mr. Knopf.



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Norman Knopf,

Good afternoon. My name is Norm Knopf, and I urge the adoption of this ZTA. Notwithstanding the very clear intent and meaning of the home provision code -- code provisions, Department of Permitting Services have misconstrued the provision to allow a furniture showroom or display. The Council has adopted a home occupation law years ago with two principal criteria in mind; one is, you have to have an activity that's a home occupation. No-brainer. Second is, that you put in performance standards. Once you have a home occupation, there's certain criteria that must be met. For example, a piano teacher -- home piano teacher giving home piano lessons; clearly a home occupation, but you have to comply with the performance standards, meaning no more than five trips per day, no more than twenty per week. So if the piano teacher wants to have ten pupils a day, she can't do it. Now what DPS has done here is simply throw out the first criteria and look only at the performance criteria. Thus, I could make dynamite in my basement; but as long as I didn't have more than the five trips, they'd say, "Okay. You've met the performance standard." And that's what's happened here. Because no one believes that a furniture showroom is a home occupation. And the DPS has simply said, "It meets the performance criteria, so we will allow it." Carry this to its logical conclusion. How about a home filled with refrigerators? Come in and pick out your refrigerator; but go and order it, so that it's delivered elsewhere and the sale occurs elsewhere. Put a new car in your garage. Come and see the car. Go to your dealership and actually buy it. This is the logical conclusion. It just doesn't make sense. It is unfair to competitors also. The other furniture stores have to pay the higher rents and the CBDs and so on. Why should they face this type of competition? Finally, and perhaps more important, this doesn't meet even the performance standards because under the code, Section 59A6.1(a)(5), "No truck deliveries are permitted except for parcels delivered by public or private parcel services that customarily make residential deliveries." This furniture is delivered, obviously, by a moving van. That is not something you order by Federal Express, and it comes by UPS. It never should have been approved; but it has been, and we plead with you -- go ahead and study it, as the Planning Board recommended. But we know where those studies go -- for years. At least in the interim, adopt this ZTA immediately and phase this out. It is not unreasonable to phase it out within twelve months. That's really liberal. There's no real investment here. The furniture, he says he's going to use it for his own home. Fine. No loss. Or he can move it to a store and sell it. So we're not really losing a -- making a major investment that's being phased out very rapidly. There has been some suggestion by the Planning Board that if somebody makes some furniture in the house and sells it, they may not be able to come under the home occupation. That's a simple amendment here. Simply amend the proposal to say that it's a home occupation for -- to display furniture, and so on, not made in -- on the premises. That can easily be rectified. So we urge the immediate adoption of this amendment. Thank you.

Council President Leventhal,

Thank you. There are no questions for this panel. We appreciate your testimony. Agenda item 10 is a Public Hearing on a special appropriation to the FY07 Operating



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1 Budget of the Arts and Humanities Council Non-Departmental Account for the Levine
2 School of Music in the amount of \$50,000. Action is scheduled for October 31st. Anyone
3 who wants to submit additional information for the Council to consider should do so by
4 the close of business Wednesday, October 25th. There are no speakers for this
5 hearing. Agenda item No. 11 is a public hearing on a special appropriation to the FY07
6 Operating Budget of the Montgomery County Fire and Rescue Service for Fire Code
7 Enforcement – Fire Safety Code: Fee Schedule for Inspections, Permits, Licenses,
8 Certificates and Exceptions in the amount of \$2,582,630. Action is scheduled for
9 October 31st. Anyone who wants to submit additional information for the Council to
10 consider should do so by the close of business Wednesday, October 25th. There are no
11 witnesses for this hearing. Mrs. Praisner.

12
13 Councilmember Praisner,
14 Again on this, if this is the fee schedule, the source of funding is the fees, correct?

15
16 Minna Davidson,
17 It's in part fees and in part fire tax district funds.

18
19 Councilmember Praisner,
20 Well, we're going to have this discussion MFP and public safety on the whole issue of
21 the Fire Tax District as a separate entity, and this whole issue of funds and the status of
22 the Fire Tax Fund inside the property tax, which is what it is. It's current revenue from
23 property tax. So, I think we need -- again, I just want to make the point that we need to
24 look at how we display the source of funding.

25
26 Minna Davidson,
27 Thank you.

28
29 Council President Leventhal,
30 Thank you very much. We now turn to Agenda item 12 which is a Public Hearing on
31 Bill 42-06, Procurement – Employee Health Insurance Requirement, which would
32 require the Director of Procurement to require certain county contractors to offer an
33 adequate level of health insurance coverage, comparable to that offered to county
34 employees, to the employees of the contractors. Also, the bill would authorize the
35 Director of Procurement to require certain bidders and offerers to submit certain
36 information regarding employee health insurance and generally amend county
37 procurement law. The Management and Fiscal Policy and Health and Human Services
38 Committees will hold a joint work session, and that will be scheduled at a later date.
39 Anyone who wants to submit additional information for the Council to consider should
40 do so by the close of business Friday, October 27th. We have seven witnesses on two
41 panels. The first panel includes: Gino Renne, Sean Dobson, Sandy Vogelgesang, and
42 Becky Wagner. Mr. Renne, you're first; press the button and proceed.

43
44 Gino Renne,
45 Good afternoon, President Leventhal and members of the Montgomery County Council.
46 My name is Gino Renne, President of UFCW, Local 1994 MCGEO. I'm here today to



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1 urge you to pass Council Bill 42-06, Procurement – Employee Health Insurance
2 Requirement. This bill, introduced by Councilmember Subin, is nothing more than the
3 expansion of the Living Wage Bill concept, including health insurance benefits in
4 addition to wages. Every year we see fewer and fewer Americans covered by no or low
5 health insurance coverage. These declining rates of coverage are not only a national
6 disgrace, but amount to nothing less than bad public policy. I believe that it should be
7 the policy of Montgomery County to lead the way in doing what it can to expand its
8 coverage for all employees for whom it is able to do so. This bill takes a significant step
9 in the right direction by requiring all contractors who do \$50,000 or more worth of
10 business with Montgomery County to offer an adequate level of health insurance
11 coverage comparable to that offered to county employees. In the private sector, there
12 are companies which are good corporate citizens, who strive to do the right thing and
13 provide decent, affordable healthcare coverage for their employees. Unfortunate -- ly, ly,
14 Boy, I'm having a good day today -- unfortunately, there are too many employees who
15 are following the Wal-Mart model of employee benefit coverage, providing either no
16 coverage at all or low coverage categorized by unaffordable premiums and high
17 deductibles. This makes coverage a fiction, beyond the ability of low-wage employees
18 to pay for coverage which is disingenuously offered. Central to this corporate strategy is
19 the dumping of their health insurance responsibilities onto tax payers who provide
20 through public Medicaid that which employers deliberately choose not to provide. I
21 believe it should be the public policy of not just Montgomery County, but of all
22 progressive state and local governments to not subsidize private sector contractors
23 through public dollars, thus providing incentives for bad corporate behavior. Mr. Subin's
24 bill provides an opportunity for Montgomery County to lead the way in that regard.
25 Companies competing for public contracts based on low/no benefits exploit a vulnerable
26 population of workers, and should not be encouraged by the county's failure to require a
27 decent level of coverage. Good public policy should be about ameliorating these
28 societal problems, not exacerbating them. Therefore, I respectfully urge your support of
29 Bill 42-06. Thank you.

30
31 Council President Leventhal,
32 Thank you for your testimony. Mr. Dobson.

33
34 Sean Dobson,
35 Thank you, Mr. President, for this opportunity to testify; and thank you to
36 Councilmember Subin --

37
38 Council President Leventhal,
39 You need to press the button, Sean. There -- it's on your microphone.

40
41 Sean Dobson,
42 My name is Sean Dobson, Deputy Director of Progressive Maryland. Thank you for the
43 opportunity to testify and thanks to Councilmember Subin for sponsoring this landmark
44 legislation. This good bill rests on a simple principle; namely, that getting a government
45 contract is not a constitutional right. It's a privilege; and it's a privilege because when
46 you get the contract, you're locked in and guaranteed profits -- and indeed, profits from



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1 taxpayer dollars. So in return for that privilege, you should be held to a higher standard
2 than what a normal company is held to in the private marketplace. We already do that in
3 the form of heightened scrutiny on these companies. We now require them in
4 Montgomery County to provide a living wage, prevailing wage laws, etc. Now, I think it's
5 great that you're considering extending that principle now to require them to provide
6 affordable healthcare. That's why Progressive Maryland supports this bill. We all know
7 that there's a real healthcare coverage crisis in this country. It seems the government
8 should set the example of requiring this kind of behavior from corporate citizens; and, if
9 we don't do that, then of course more and more of our fellow Montgomery Countians will
10 be denied healthcare, and the taxpayers will pick up the bill for that. So we heart --
11 Progressive Maryland heartily endorses this legislation, and we thank you for
12 considering it. Thank you.

13
14 Council President Leventhal
15 Thank you. Sandy Vogelgesang.

16
17 Sandy Vogelsang,
18 Good afternoon, Mr. President and members of the Council. My name is Sandy
19 Vogelgesang. I'm president of the West Bradley Citizens Association and a leader of the
20 Seven Locks Coalition. Although most members of our community would heartily
21 endorse this legislation, I want to make clear that I am speaking as a concerned
22 individual. As you know, this bill would require county contractors with service contracts
23 valued at more than \$50,000 to offer to their employees an adequate level of health
24 insurance coverage that's comparable to that offered to employees of Montgomery
25 County. We strongly salute Mr. Subin for his initiative in introducing this bill; and we
26 believe that the legislation merits your endorsement on the following three grounds.
27 First of all, we think that this legislation helps assure vital healthcare protection for more
28 workers in this county. Those working for contractors should not be treated like second-
29 class citizens. They deserve protection, at least at reasonably comparable rates to
30 those provided for county employees. Second, we believe that this bill helps assure
31 fairness and, frankly, a level playing field. There's no reason why private contractors for
32 the county should operate on the cheap. Instead they should provide decent health
33 benefits to their workers, who are doing work similar to that done by regular county
34 employees. Third, this bill helps assure that county taxpayers, as Mr. Renne indicated,
35 have their tax dollars spent equitably and without harm or prejudice to those who may
36 need healthcare the most. In sum, though we understand that some minor modification
37 of the bill may be needed to take into account the special situation of some entities,
38 such as nonprofits or others, we urge your overall approval for the proposed legislation.
39 Its central thrust is quite simply a just and, we believe, an overdue expansion of the
40 living wage concept. As such, this legislation reflects the sense of social responsibility
41 for which our county, Montgomery County, is rightly renowned. Thank you so much.

42
43 Council President Leventhal,
44 Thank you for your testimony. Becky Wagner.

45
46 Becky Wagner,



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1 Good afternoon. My name is Becky Wagner, and I service Executive Director of
2 Community Ministry of Montgomery County. We're in an interface coalition of 135
3 congregations working together to meet the needs of the poor through service,
4 education, and advocacy. Today I'm offering testimony on Bill 42-06. I have read the bill
5 and the materials provided by the Council office to determine what the bill is requiring of
6 providers having contracts over \$50,000 or more. I imagine the bill will be developed in
7 committee and over time. For that reason, I thought it might be helpful to share with you
8 the benefits provided by Community Ministry and their cost in the challenge of meeting
9 this obligation. CMMC pays a living wage and has for six years. In addition, employees
10 working 20 or more hours per week qualify for full benefits including: health and life
11 insurance, a matching 403(b) plan, vacation, and sick leave. We make every attempt to
12 have employees work at least 20 hours per week so that they may take advantage of
13 these benefits. The health insurance benefit is the most costly benefit, and 36 of our
14 employees participate in the plan. We pay \$3,000 toward the annual premium and the
15 employee pays \$20 per pay period, for a total of \$520 annually. Providing that benefit,
16 which we are glad to do, costs Community Ministry just under \$100,000 a year for
17 health insurance alone. Our entire benefit package is about 17 percent of total salary.
18 Though do --I do not understand clearly the daunting matrix of the county's benefits and
19 premiums, it appears that in all cases the annual premiums are well above what we are
20 able to afford. Our full-coverage HMO per individual is \$3,500 a year, and for a family it
21 is \$9,400 a year. This premium is the best price after researching MANO and CNA and
22 other small business provider packages. As you know, we are a well-established
23 nonprofit; and we have a broad-based funding stream. A significant increase beyond
24 what we are currently managing for health insurance would present an enormous
25 burden, and one I am not confident that we could manage. For emerging and smaller
26 nonprofits serving special communities, I would expect mandated county level benefits
27 and premiums could break the backs of those providers. In the past three-years, our
28 health insurance premiums have increased by 14 -- 11, 14, and 15 percent, for a total of
29 40 percent. Our county contracts have allowed 1 and 2 percent inflationary increases for
30 that same period and only after an Act of Council during the budget process. As in all of
31 our work, funds for operating and infrastructure costs are the most difficult to raise. I
32 urge you to consider the implications of the unfunded mandate of matching the county's
33 benefits and premium costs. While asking thoughtful consideration of the need for
34 nonprofit organizations, we believe in the value of providing health insurance for our
35 employees and would be pleased to work with you as this legislation is developed.

36 Council President Leventhal,

37 Thank you, Becky. Okay. There are no questions for this panel. Thank you all very
38 much for your testimony. We appreciate it. Our next witnesses are Linda Kahn, James --
39 I don't know if it's Gipson or Gibson. I have "Gipson" here, but

40
41
42 James Gipson,
43 Gipson.

44
45 Council President Leventhal,
46 Gibson with a "b" as in boy or "p" as in Peter?



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James Gipson,
"P" as in Peter.

Council President Leventhal,
Oh, good. Well, that's what it says. It's spelled correctly. And Elbridge James.
Ms. Kahn, you're first. Please proceed.

Linda Kahn,
Hello. My name is Linda Khan. I'm the administrative director of Impact Silver Spring. We're a nonprofit organization committed to supporting all members of the community to work collaboratively across lines of race, class, and culture to address important community issues. I'm not here today to state a position on the challenging arena of health insurance, as we are still trying to digest all the facets of this pending legislation. We are also fully committed to always trying to find the best possible supports for our staff, and recognize the value and need for good benefits. I'm here today to tell you briefly the story of our seven-year-old nonprofit, and how we have struggled with what it takes to accomplish that. For many years since Impact's birth, key staff members were fortunate to have access to health insurance through spouses. Other staff members were primarily members of the AmeriCorps Program where health benefits were included, or they were part-time students who still had family or school benefits. We were lucky. Impact's budget in those first years was under \$30,000. To be honest, I'm not sure Impact Silver Spring would have successfully emerged out of the starting gate if covering full health benefits, even for a small staff, had been a necessity. As the organization grew, we recognized that adding new staff would need to be accompanied by offering some amount of health benefits. As a very small organization, without the luxury of a staff-level personnel department, we waded through the complex world of health benefits. We researched, went to presentations, and conferred with our board's Finance and Administration Committee. Finally, for our budget planning for fiscal year '06, we made what for us was a huge leap by including a line item for \$7,200 which was intended to allow for a \$300 employer contribution to the health plan of two staff members. For the current year, '07, we've increased the line item to \$9,600. This undoubtedly sounds extremely modest to bigger organizations and businesses; but for us, every fixed cost is another big gulp. We would love to offer a very generous and comprehensive healthcare package. We would see it as an important step in the maturity of the organization. I'm sure it would allow us to attract and keep an expanded and different group of staff candidates; but the reality is that the costs required to do this are way beyond the means of the organization. Additional funding would have to be targeted specifically for that purpose to not seriously undermine our ability to continue our important community work. We understand that for us, our story and this issue are just pieces of the very complicated puzzle of how nonprofits can sustain themselves in the county. As always, we welcome the opportunity to continue that important conversation and commend the Council, and Councilmember Subin, for bringing the critical issue of healthcare to that discussion. Thank you.

Council President Leventhal,



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1 Thank you very much. Mr. Gipson.

3 James Gipson,

4 I'm James Gipson, the Human Resource Manager for GUIDE Program of 8643 Cherry
5 Lane in Laurel, Maryland. GUIDE is a nonprofit organization in the human service field.
6 GUIDE offers an array of mental health, substance abuse, juvenile justice, and social
7 services to children, adolescents, adults, and families throughout the Washington
8 D.C./Baltimore area. Last year GUIDE provided direct services to 2,638 individuals.
9 GUIDE currently employs a total of 178 employees; 104 of these employees are eligible
10 for fringe benefits. In Montgomery County, GUIDE employs 59 employees, and 49 of
11 these employees are eligible for benefits. GUIDE feels strongly that the goals of
12 Bill 42-06 are admirable, and we subscribe to the spirit behind the bill. In fact, GUIDE
13 works diligently to provide meaningful fringe benefits to our employees, and we feel we
14 have been ahead of the curve in this regard. By going through the Center for Nonprofit
15 Advancement, which is based out of Washington, D.C., GUIDE can offer its employees
16 choices in healthcare that cannot be offered through the Maryland-based provider. Over
17 the years during which all professional sectors had experienced increased in healthcare
18 costs, GUIDE has absorbed the majority of the increase in healthcare for its employees.
19 Despite GUIDE's admiration for Bill 42-06, we are hesitant to support the bill. We
20 recognize that we may not know all the ins and outs of the bill, but we strongly feel that
21 the bill of this nature could have drastic negative effects on the way we are able to do
22 business. We feel the unintended consequences of the bill may include forcing us to
23 raise our fringe benefits rights, forcing us to differentiate between benefits between
24 programs offered in different counties, decreasing the benefits that we offer, forcing us
25 to seek more money from current contractors. In conclusion, although we applaud the
26 idea for a single jurisdiction to go its own way in requiring contractors to provide health
27 insurance for their employees, this bill could have some very disastrous, unintentional
28 consequences for those of us in the nonprofit community that strive to offer the best
29 benefit package we can with the funds that we have. We feel a bill of this nature could
30 undo a lot of our past efforts to offer our employees quality benefits, and could force us
31 to discriminate between Montgomery County and the rest of the area that we serve. As
32 a result, the benefits of such legislation may not achieve without -- achieve what it
33 intends to achieve without some negative consequences. Thank you for your time.

35 Council President Leventhal,
36 Mr. James.

38 Elbridge James,

39 Good afternoon to the -- ooh -- forgot myself. Good afternoon to the panel and to the
40 Council. I'm Elbridge James. I'm \INAUDIBLE\ not here for Elbridge James, but for the
41 NAACP representing Henry Halestock in Executive Committee. Each one of you have
42 my written testimony; and so, therefore, I'm not going to go back over that except for to
43 say that the NAACP strongly supports this measure. We believe it is warranted
44 because, in fact, the county is looking at the least of us; and we need to provide
45 services for the least of us, and this legislation goes a long way in taking what some
46 people believe is an abstract measure to the reality that many of our citizens face. You



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1 have that written testimony, so I'm going to stop there on that. What I'm asking you for is
2 for a citizen. I've been a citizen of Montgomery County for the last thirty years. I moved
3 to Montgomery County because of the progressive nature of how our government treats
4 our citizens. I walk the county. I walk the poorest parts of our county; I walk the richest
5 parts of our county and meet with the police to tell them I'm not here to rob anybody.
6 And when I walk the poorest parts of our county, I see our citizens who, without your
7 help, would lead a very, very bad life. I see them fighting for their children every day,
8 and fighting for healthcare for their children every day. I see them depending on the
9 Social Services because employers do not provide the healthcare measures. I've
10 listened to the private -- excuse me, the public sector here talk about unable to afford
11 this kind of legislation. I say because we are the best and the brightest, we need to not
12 make this an unfunded mandate but need to find the resources available so that, in fact,
13 our contractors here can find the opportunities to provide the healthcare coverage that
14 is needed by our citizens. And let's not talk about adults. We're talking about children.
15 We're talking about babies. We're talking about women that are trying to raise our
16 citizens and our residents. Without this kind of coverage, they depend on Social
17 Services which then drag down my tax dollars. These are my tax dollars. So I'm a
18 citizen that says, I want my tax dollars used for the benefit of every citizen. I want these
19 citizens to feel good about themselves; and when they can go provide their own
20 healthcare coverage, they can take their children to their doctors and know they have a
21 health plan. They don't have to work two or three jobs; so that, in fact, they can be
22 home to help these children do their homework, to have parental controls and guidance
23 so we have less pressure on our police and Social Services. We need this type of
24 opportunity. I ask you as a citizen, not as a community leader, but as a citizen to pass
25 this legislation. It goes a long way to helping our children and helping our families.
26 Thank you.

27
28 Council President Leventhal,
29 Thank you for your testimony. There are no questions. That concludes this agenda item.
30 Agenda item 12 is a public hearing -- excuse me, Agenda item 13 is a Public Hearing on
31 a supplemental appropriation to the Capital Budget and amendment to the FY07-2012
32 Capital Improvements Program for Montgomery College for the King Street Art Center
33 in the amount of \$2,000,000. Action is scheduled following the hearing. Let me just -- for
34 those colleagues who may not be present, there will be a series of votes starting very
35 soon; and there are no witnesses --

36
37 Multiple Voices,
38 \INAUDIBLE\
39

40 Council President Leventhal,
41 -- and so we are prepared to vote on the supplemental appropriation.
42

43 Councilmember Praisner,
44 Is there an Ed Committee recommendation?
45

46 Council President Leventhal,



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1 Is there an Ed Committee recommendation? Mr. Sherer.

2
3 Mr. Sherer,

4 The Education Committee's recommendation is to approve it.

5
6 Council President Leventhal,
7 Okay.

8
9 Multiple voices,

10 \INAUDIBLE\

11
12 Council President Leventhal,

13 The Education Committee recommends the supplemental appropriation of \$2,000,000.

14 Those in favor will signify by raising their hands. It is unanimous among those present.

15 Agenda Item 14 is a public hearing on a supplemental appropriation to the FY07

16 Operating Budget of the Department of Economic Development, for the Conference and

17 Visitor's Bureau NDA in the amount of \$126,800. Action is scheduled following the

18 hearing. There are no speakers. We need a motion. Mrs. Praisner.

19
20 Councilmember Praisner,

21 I just wanted to make a comment so folks understood. We make a dedicated
22 contribution out of the hotel/motel tax to the Conference and Visitor's Bureau. It's a
23 percentage; and in calculating the amount of the revenue that was generated by the
24 hotel/motel tax, this is the reconciliation as I understand it. And, therefore, it's consistent
25 with the law that we've passed. The \$126,800 distributes the FY05 revenue and the
26 FY06 revenue coming from the hotel/motel tax that is to go based on the 3.5 percent of
27 revenue to the Conference and Visitor's Bureau. So I will move approval, Mr. President.

28
29 Council President Leventhal,

30 Mrs. Praisner has moved and Mr. Knapp has seconded approval of the supplemental
31 appropriation for the Conference and Visitor's Bureau. Those in favor will signify by
32 raising their hands. (Pause) And there are six of us here, and the supplemental
33 appropriation carries, unanimous among those present. Agenda item 15 is a Clarksburg
34 Corrective Map Amendment and Public Hearing on Clarksburg Corrective Map
35 Amendment. We're now meeting as District Council. This Corrective Map Amendment
36 would correct drafting errors made in the official zoning map to indicate that a 283.5
37 acre property in Clarksburg was intended to be rezoned from RE1-TDR, RMS1-TRD,
38 and I-3 to MXPB. The Council will act as District Council on this corrective map
39 amendment immediately following the hearing. There are no speakers.

40
41 Councilmember Praisner,
42 Steve.

43
44 Council President Leventhal,

45 He was not listed; but, Mr. Elmendorf, if you'd –
46



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1 Multiple voices,
2 \INAUDIBLE\
3

4 Council President Leventhal,
5 Well, he is listed. What do you know? Mr. Elmendorf. I was reading – I was looking at
6 the wrong item.
7

8 LAUGHTER
9

10 Council President Leventhal,
11 Mr. Elmendorf, please press your – press your button.
12

13 Stephen Elmendorf,
14 I'll be very brief. I did put a letter in the record. We first wanted to thank the Planning
15 Board for taking this matter up at our request. There – and we would urge your adoption
16 of it today. There really isn't any debate here. The maps, for a couple of reasons, are
17 flat out wrong; and no one really can explain -- nor needs to explain-- you know, how
18 the error occurred. But it's – it's -- this is a public document, and it's very important that
19 it accurately reflect what this Council did, you know, I guess three years ago. I'm
20 actually representing all of the owners up at the Cabin Branch development, and this
21 just came up in one of the site plans that we were – I was preparing for one of my
22 clients up there. We – we saw a map designation that made no sense, so that started
23 the ball rolling.
24

25 Council President Leventhal,
26 Okay. We need a motion.
27

28 (Motion)
29

30 Council President Leventhal,
31 Mr. Knapp has moved and Ms. Floreen has seconded approval of the Corrective Map
32 Amendment. Those in favor will signify by raising their hands. We need a roll call vote.
33 Okay.
34

35 Council Clerk,
36 Ms. Floreen
37

38 Councilmember Floreen,
39 Yes.
40

41 Council Clerk,
42 Mr. Silverman
43

44 Councilmember Silverman,
45 Yes.
46



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1 Council Clerk,
2 Mr. Knapp.

3
4 Councilmember Knapp,
5 Yes.

6
7 Council Clerk,
8 Mr. Andrews

9
10 Councilmember Andrews,
11 Yes.

12
13 Council Clerk,
14 Ms. Praisner

15
16 Councilmember Praisner,
17 Yes.

18
19 Council Clerk,
20 Mr. Leventhal

21
22 Council President Leventhal,
23 Yes. The Corrective Map Amendment passes on a vote of 6 to 0. The Council stands in
24 recessed until the hour of 7:30 p.m.
25